FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1987

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 3400

TO AMEND TITLE 5, UNITED STATES CODE, TO RESTORE TO FEDERAL CIVILIAN EMPLOYEES THEIR RIGHT TO PARTICIPATE VOLUNTARILY, AS PRIVATE CITIZENS, IN THE POLITICAL PROCESSES OF THE NATION, TO PROTECT SUCH EMPLOYEES FROM IMPROPER POLITICAL SOLICITATIONS, AND FOR OTHER PURPOSES

FEBRUARY 23, 24, 1988

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FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1987

TUESDAY, FEBRUARY 23, 1988

U.S SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC

The Committee met, pursuant to notice, at 9:35 a.m., in room SD-342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn, Levin, Sasser, Pryor, Bingaman, Roth, Stevens, Heinz, and Trible.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. The hearing will be in order.

Good morning and welcome to today's hearing on H.R. 3400, the Federal Employees Political Activities Act of 1987. H.R. 3400 would amend the Hatch Act, the 1939 statute that prohibits most Federal employees from being politically active. H.R. 3400 proposes changes that would allow Federal civilian and postal service employees to participate voluntarily as private citizens in the political processes of the country.

Currently, Federal and postal workers must comply with more than 3,000 separate regulatory rulings about what they can or cannot do politically. This set of rulings is complicated, restrictive, and has become confusing and illogical over the years.

For example, according to current law, a Federal or postal worker may wear a campaign button on the job. He or she may write a $1,000 check to a candidate. But that same employee cannot carry a poster at a political rally or stuff envelopes for a candidate at night.

Under current law a Federal worker can put a political poster on the family car if it is no larger than 15 inches by 30 inches. However, if the employee wishes to post it in the yard at home, it can be no larger than 14 by 22 inches.

Woe to the Federal worker who lives in a mobile home so his front yard is his car. The size of a political poster there, I guess, would become a Talmudic dilemma.

As nonsensical as some of these regulations get, I probably shouldn't be bringing them up in a humorous fashion. Because the right of American citizens in good standing to participate in our political system is a very serious and important right, a right that if restricted at all should be restricted only to the extent necessary to prevent more profound violations of other rights from occurring.

It is important to note that when the Hatch Act was enacted into law almost 50 years ago civil service jobs were patronage jobs. Political cronies and coercion were the grease that oiled the bureaucratic machine and it was the way Government was set up, structured and was expected to work.

Now, we have a different kind of system, a merit system, a professional civil service whose needs and requirements have drastically changed. There may be a compelling case for revamping restrictions on the political activities of today's civil servants, providing we can be assured of building an effective mechanism to prevent any backsliding to the bad old days of political cronyism at its worst at all levels.

I would like to note that I am acutely aware of the concerns of some of my constituents about the question of amending the Hatch Act. They are worried that too dramatic changes in the Act could politicize the civil service system, exposing Federal workers to coercion and conflicts of interest. Their concern, and mine, is that the integrity of the Federal work force, as well as that of the political process, not be destroyed by the equally important effort to ensure the right to political participation.

H.R. 3400 attempts to draw clear cut lines against political activities on the job, for full participation off the job. The Committee's hearings will examine whether these goals can be met, whether we can guarantee Federal workers their full rights to participate in the American political system and at the same time ensure a nonpartisan, effective bureaucracy, free from the pressures that unrestricted political activity might bring.

These are very important issues. They are of real concern to many people. Our witnesses today, who come from a wide range of areas in this Government, are ably suited to address these vital questions. I want to thank you all for your attendance and we look forward to an excellent morning of testimony.

Since we do have so many witnesses today, if you do have longer statements they will be entered into the record. We have asked that your verbal statements be kept to 5 minutes if you possibly can.

Also, before we begin I would like to extend a special word of thanks to Senator David Pryor, who is chairman of the Subcommittee on Federal Services, Post Office, and Civil Service, for his contributions on this particular issue.

Ordinarily things like this, most items we refer to Subcommittee. When we have ones that are of particular importance to large numbers of people and we know there is going to be a great deal of interest, we have these hearings at the full Committee level so that all the Committee members can participate if they wish to do so.

So we are having this hearing today at full Committee level and I will be here for part of the meeting and in and out some of the time and David will be chairing the majority of the hearing. So I appreciate his willingness to do that during this hearing this morning.

Senator Roth, any remarks?

OPENING STATEMENT OF SENATOR ROTH

Senator Roth. Thank you, Mr. Chairman.

When King Henry II wondered aloud whether there was anyone who would rid him of "this troublesome priest" and four knights murdered Thomas A. Becket in Canterbury Cathedral, was that coercion? From the inception of Government, public servants have been trying to please their superiors. That is the way it was in King Henry's day, that is the way it is today, and that is the way it will be regardless of what we do here.

But ours is a Government of laws and not of men. Thomas Jefferson, I believe, was the first of many to perceive the particular problem posed by the public servant in such a system. In 1801, he issued an executive order stating that a public servant may not take "any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."

Since then, succeeding presidents have grappled with the issue in similar fashion. The most famous pronouncement is that of Theodore Roosevelt, who forbade public servants to take part, "in political management or political campaigns."

Then in the 1930s the administrative state was born and the Federal Government grew. Some fairly serious abuses were brought to light and Congress codified the Jeffersonian/Roosevelt principle in the Hatch Act.

In my opinion, the Hatch Act has worked remarkably well. Yes, there are some problems, but I would no more repeal the Hatch Act for those reasons than I would repeal any other civil rights law in its entirety because regulations thereunder are confusing. Yes, I said "other civil rights law," because to me the Hatch Act is a civil rights law enacted for the protection of our public servants from political discrimination.

Proponents commonly argue that we must roll back the Hatch Act to allow public servants to enjoy their First Amendment rights. For the record, the Supreme Court has on more than one occasion upheld the constitutionality of Hatch Act protections against First Amendment attacks. Of course, Congress is free to enact H.R. 3400. If it did, I do not doubt that some public servants would engage in more speech. But frankly, I wonder whether that speech would be free speech, the value protected by the First Amendment.

I have serious reservations about risking the removal of Hatch Act protections. I understand full well that certain employee unions want those protections removed. But what about the rank-and-file worker the Hatch Act protects? Frankly, I have not perceived any rank-and-file groundswell for change.

In assessing the risk attendant to removing Hatch Act protections, one must, of course, assess the relative advantages and disadvantages. On one hand we have the small percentage of public servants who truly desire to take part in the business of electioneering.

On the other hand, we have protections that serve every public servant day after day. Moreover, these protections serve to provide neutral, nonpartisan Government service, which is a right of American citizens in their relationship with their Government. In this respect the Hatch Act fulfills the promise of a Government of laws and not of men. Thus, on balance, I have very serious reservations about the wisdom of H.R. 3400.

In 1976 President Ford successfully vetoed legislation similar to H.R. 3400. In his veto message he stated; "The public expects the Government service will be provided in a neutral, nonpartisan fashion. This bill would produce the opposite result. If this bill were to become law, I believe pressures would be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anti-coercion statute so that they would inevitably feel compelled to engage in partisan activity."

He concludes: "This would be bad for the employee, bad for the Government, and bad for the public."

Mr. Chairman, we have a full schedule of witnesses. I welcome them. I shall read and listen to what they say, although I will have to leave to appear before a House Committee.

But in fairness to the proponents, I must say that I have very serious reservations about this proposed legislation.

Thank you, Mr. Chairman.

Chairman GLENN. Thank you, Senator Roth.

Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Chairman, I would just ask unanimous consent that the full body of my statement be printed in the record. I will not read my statement.

Chairman GLENN. Without objection, so ordered.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. I would like to say, Mr. Chairman, I think this hearing is most timely. Here we are almost on the eve of electing a new president. One of the criticisms and concerns we have about the system which we operate is that only half of us participate.

In the last 50 years, we have had a law on the books, the Hatch Act, which some argue prevents participation to the fullest degree. I think that the Federal employee today is forced to make a, "political contribution," although in the interest of good Government, because that political contribution is relinquishing some of their rights as guaranteed under the First Amendment. So the Hatch Act in itself implies a contribution that I think we have got to examine today, and I hope that will be part of the purpose of this hearing.

In the last 50 years, in the interpretation and the administration of the Hatch Act as we know it, it seems that there has been a growing disappearance, an evaporation of logic as we go down each succeeding year, through administrative decree and rulings, edicts of OPM, and court interpretation of what the Hatch Act is.

Senator Glenn, the Chairman of this Committee, has cited some of the inconsistencies which are implied in the Hatch Act, what an employee may or may not do. Like, for example, going to a political rally but not waving a placard. Like not being able after hours to go down and stuff envelopes or nail up yard signs.

So we do have a lot of inconsistencies, and I think that today we are really trying to grapple with a sense of achieving logic, achieving balance in the relationship between the Federal employee and the Federal Government that that employee serves.

I think the easiest thing that the Federal employee could do today to get back full steam into the political stream would be to become a consultant, to do the same job, work for the same agency, work the same hours, but to say, "I am a consultant."

I do not think there is any secret about how I have felt over the past years about the growing use of consulting and contracting out in our Federal system. I think it is very dangerous and I think it, again, should be the subject of further hearings by this Committee, as we have had in the past.

So with that, Mr. Chairman, let me just say that with all due respect to King Henry II, I do not think that King Henry II could really today tell a Federal employee what he or she could legally do, and now we are trying to answer that question, give that advice and achieve that balance that we have been attempting for the past 50 years.

Thank you, Mr. Chairman.

[Senator Pryor's prepared statement follows:]

PREPARED STATEMENT OF SENATOR PRYOR

Today is the first of two days of hearings on H.R. 3400, the Federal Employees' Political Activities Act of 1987, a bill that amends the Hatch Act of 1939.

We are likely to hear a great deal during these hearings about the history of the Hatch Act; that the concept of a politically neutral civil service is rooted in the earliest days of our Republic. While I don't think we need to go into a detailed history of the Act at this point in time, I do think it is important to keep in mind that the Act was passed in the wake of a scandal involving the coercion of civil servants by politicians and political appointees. Both the political process and the government employee were abused by the wrongdoers and, perhaps, by the remedy itself.

Employees protected by the Hatch Act—all executive branch employees, except those appointed by the President with the advice and consent of the Senate—are forced to make a kind of political contribution, albeit in the interest of good government: they must relinquish some of their rights as guaranteed by the First Amendment.

A "Hatched" employee may not be a candidate for office in a partisan election and may not play an active role in partisan campaigns. Whatever your views on fairness, at first glance this seems, a simple and neat outline. On further reflection, however, all semblance of logic disappears.

A "Hatched" employee may, like any citizen, make a $1000 campaign contribution. The employee may not, however, give an in-kind contribution of his time to stuff envelopes.

If you are "Hatched," you may attend a political rally. Once there, however, you may not wave a placard.

While you may not wave a placard at a rally, you may post a sign in your car or on your front lawn—so long as the sign does not violate certain arcane size limitation rules.

If "Hatched," you may not make a campaign speech in a partisan election, but you may express your opinion about a candidate publically. I must admit, the fine line on this one has me baffled!

If you are a temporary federal employee—say a secretary or a clerk—you get none of the rights and benefits of a regular civil servant. You are, however, "Hatched."

If you are on leave, furloughed or an intermitten employee, you are "Hatched" even when you do not receive a federal paycheck.

However, if you are a high-priced consultant, you are only "Hatched" when on the government clock.

If you are "Hatched" and unhappy, don't give up hope. Maybe they will select your operation for contracting-out, privatization or a Fed-Coop. Then you can perform the same job, in the same facility for less pay BUT, as a contractor employee, at least you will have full First Amendment rights!

Something just may be wrong with the Hatch Act and the manner in which it is administered. It has been on the books for almost 50 years, and, I believe, it warrants our attention.

Chairman GLENN. Thank you very much.

Senator Heinz, any opening comments?

Senator HEINZ. Mr. Chairman, in the interest of time, I will just put my statement in the record.

Chairman GLENN. Fine. It will be included in its entirety without objection.

[The opening statement of Senator Heinz follows:]

OPENING STATEMENT OF SENATOR HEINZ

Mr. Chairman, I am very pleased that the committee is moving quickly to consider the political rights of Federal and postal employees. You have arranged for 2 thorough days of hearings, featuring knowledgeable witnesses.

We will hear today from good friends of the committee, people in whom I have great faith. Ron Swisher, Vincent Sombrotto, Earl Ogle, Moe Biller, Dallas Fields, and Rubin Handelman represent virtually all the Postal Services' 800,000 employees. I am pleased to welcome them before us, and look forward to their expert testimony. We will also hear from interested House and Senate colleagues, the chamber of commerce, ACLU, and others who are knowledgeable in this field.

One of the key issues to be considered is the relationship of the Postal Service to the Federal Government. Since 1970, the Postal Service has been semi-independent—or so we thought prior to budget reconciliation. The continued application of the Hatch Act to postal employees has brought some serious dislocation. I am reminded of one Pennsylvanian—a postalworker—whose wife ran for school board. In order to comply fully with the Hatch Act, he could scarcely be seen on the street with her. I certainly would like to know how public policy is advanced through strict regulation of the off duty, private lives of the men and women at the post office.

This issue should probably have been dealt with back in 1970. But we must now move to make amends.

Despite the clear needs of postal employees, I have some serious questions about the proposed legislation, which I would like to see answered. Does H.R. 3400 fully protect Federal and postal employees from on-the-job coercion—from supervisors, fellow employees, and outside groups? Can we be certain that partisan political participation by those in sensitive Federal positions—International Trade Administration, IRS, Department of Defense, and FBI—to name a few, will not in any way endanger the mission of their agency, or provide sensitive information to political groups to be used for partisan advantage?

My guess is that the original authors of the Hatch Act intended and had it very much in mind to protect against that kind of abuse. I do not question the validity of those intentions. Government today is far larger and more powerful, and, thanks to computers, can produce an incredible array of extremely sensitive information. At the same time, there are far greater numbers of Federal employees, many—perhaps millions—of whom have no access to such sensitive information. Because so many people now work in Government positions, the application of the Hatch Act in today's Government—which is often mirrored in State laws—has far broader implications which we should review.

So, Mr. Chairman, this Senator is certainly pleased to work with the committee to address the problems of the Hatch Act. They are, after all, problems which are essentially matters of free speech and political participation. I look forward to working with my colleagues on the committee to draft a solution that meets both that goal and the test of ensuring the highest possible level of confidence and trust in Federal employees and postal workers.

Thank you, Mr. Chairman, for an opportunity to see that we move toward that very goal.

Chairman GLENN. We had five members of Congress—two Senators and three members of the House—who asked to testify on this. One, Senator Barbara Mikulski, said she would not be able to make it this morning and asked that her statement be included in the record, which it will be.[1]

We have Senator DeConcini here. Dennis, do you want to take the witness chair there please. We will let you lead off.

TESTIMONY OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, I appreciate very much being afforded an opportunity to testify today on H.R. 3400, the Hatch Act Reform Act legislation, which was passed by the House on November 17, 1987 by a vote of 305 to 112.

Mr. Chairman, I ask unanimous consent that my full text be printed in the record[2] and I will only highlight it, because I realize you have a long list of witnesses.

I congratulate you, Mr. Chairman, for holding these very informational hearings on an issue which is so important to this Nation's nearly 3 million Federal and postal employees. I would like also to take the opportunity to note your leadership on the issue, as well as that of your Ranking Member, Senator Roth and, of course, Senator Pryor and Senator Stevens and Senator Heinz and the people on this Committee who have cared to keep this issue alive even though it has not been one of the top priorities of this Administration.

I would like to congratulate Representative Clay and Representative Taylor for their diligence in working on this significant issue. Today the Senate begins addressing the question of Hatch Act reform.

The legislation which so overwhelmingly passed the House is not revolutionary by any stretch of the imagination. It does not repeal the Hatch Act, as many of its critics would have the citizens of this country believe.

Instead, it clarifies and strengthens a law which has confused and really befuddled Federal employees for nearly 50 years. Today, nearly 80 percent of all Federal civilian jobs are covered by the impartial system of merit and examination. The education level achieved by Government workers is at an all-time high, with nearly one-third possessing at least a bachelor's degree.

While the original premise for passage of the Hatch Act was to protect the Federal worker from political coercion, today it is viewed by many as a bureaucratic jumble of conflicting and confusing regulations which have the effect of freezing Federal and postal employees from their exercise of the political rights which are guaranteed to all of us.

I cannot blame them for opting out of a system which says that you cannot pass out buttons for a political candidate but you can wear one; that says you can sign a nomination petition but you cannot circulate a petition for anyone else.

This confusion is compounded, and the law is belittled, when in the name of the Hatch Act regulations are implemented stating that a political campaign sign no larger than 15 inches by 30 inches can be placed on an individual's car and that lawn signs for a candidate can be no larger than 14 by 22 inches. These trivial regulations render the Hatch Act ludicrous.

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[1] See p. 419.

[2] See p. 117.

Mr. Chairman, I learned last week of a postmaster in my State of Arizona who has to spend part of his time patrolling a postman who works for him. This postman has a relative who is a county sheriff, and another relative who is a county judge. Understandably, in his off-duty time the postman wants to help the re-election of his relatives. But because of the Hatch Act, this man's supervisor, the postmaster, must spend part of his time ensusing that his employee is living within the Hatch Act, ensuring that he is doing nothing wrong.

The postmaster, like so many Federal and postal employees in my State, wants me to do what I can to see that this outdated law is changed. The bill that is before us is a good solid bipartisan piece of legislation. It simply allows Federal employees to voluntarily exercise their First Amendment rights and engage in political activities on their own time.

The two key ideas here are "voluntary" and "on their own time." This Nation's Federal employees are intelligent enough to know if they are being buffaloed. They work hard during the day and will not allow someone else to tell them how they should spend their leisure time.

Similarly, the Federal employees of this Nation know the rules and regulations which govern their activities. I know this because they tell me loudly and very clearly when Congress is tampering with their benefits or trying to change their retirement.

Under the reformed Hatch Act, they would know if someone was trying to change or to coerce them into giving a particular candidate some encouragement or do something during working hours. They would not let someone else do something to spoil one of their hard-earned benefits or make life difficult for themselves and their peers.

These specific prohibitions make the reformed Hatch Act self-policing. A simplified Hatch Act would provide postal and Federal employees the opportunity to make their concerns known to their elected representatives, if they choose to do so. The fact that the vast majority of civil service jobs fall under the merit system should reduce the fears of some that a large body of workers can be mobilized to work for a particular individual or a party.

As a matter of fact, it has been the Reagan Administration which has chosen not to comply with the courts on the issue of formulating full and fair civil service examinations for employment applications. According to OPM, about 40 percent of the people hired in recent years—almost 4,000 employees last year—have been hired under Schedule B, temporary hiring authority, without the benefits of competitive examination.

So I find it strange that this Administration has been so loud in voicing its fears of politicizing the system under the reformed Hatch Act when it has benefited from the loophole in the Civil Service Act today.

This legislation provides stronger penalties for violation of the reformed Hatch Act. I have long believed that clearly defined penalties for violation of a law are a good deterrent, and I think it has worked that way in many, many laws that we have passed. Generally, Americans are law abiding people.

Finally, the legislation touches upon an issue which has been of particular interest of me. In the interests of a Government which speaks with one voice beyond that Nation's borders, this legislation prohibits political appointees serving overseas, including ambassadors, from engaging in any on-the-job political activities. I have had a personal experience that maybe some of you have had, with ambassadors coming back to your State and campaigning in their role as an ambassador for an opponent in a partisan election.

Thus, the bill before us today is a good bill. It clarifies the distinctions between on-and off-duty activities that would be allowed. It specifies the penalties for violation of the Act. It strengthens the merit system and enhances the self-policing aspects inherent in the bill. It enhances the foreign policy of this Nation and it improves the American political process by allowing one of the most intelligent segments of this country's assets to be part of the political system.

Because of the Committee's time constraints, I would like merely to mention a few areas of concern which I have regarding "un-Hatching" employees in sensitive positions. My full statement goes into detail on this.

To avoid the appearance of impropriety, the definition of the term "political activities" and the issue of tightening the merit system should be thoroughly explored. These comments are further explained in the text of my statement, Mr. Chairman.

Now, in conclusion, Mr. Chairman, I would urge my colleagues in the Senate to stop treating American Federal and postal employees as second class citizens and to embrace this Hatch Act reform legislation. On balance, it is good bipartisan legislation which would restore long-denied First Amendment rights to a group which serves this Nation daily in an exemplary manner.

To those who fear that Hatch Act reform may bring coercion, I would argue that coercion takes many forms and is undoubtedly present today under the ill-defined ability of the present law. Instead, let us be for good Government, fair Government and equitable Government.

Mr. Chairman, thank you very much for your time. I realize how busy this Committee is.

Chairman **GLENN**. Thank you very much, Senator DeConcini.

Are there any questions?

[No response.]

Chairman **GLENN**. I have no questions. Thank you, Dennis. Thank you very much.

We had three members of the House ask to testify, also; the Honorable William (Bill) Clay, Frank Horton, and Gene Taylor. Gentlemen, if you would come on up to the table please. I do not believe Mr. Horton is here yet, but we are glad to welcome you.

Senator Roth a moment ago said he was on the way over to testify before a House committee and you are over here, so this is a reciprocal action, I guess.

Senator **STEVENS**. Mr. Chairman, I would ask that my opening statement be printed in the record at this point.

Chairman **GLENN**. It will be included in the record. Thank you.

[The opening statement of Senator Stevens follows:]

Opening Statement of Senator Stevens

Mr. Chairman, I appreciate you scheduling hearings on this legislation and look forward to the testimony to be presented by our witnesses today and tomorrow.

I believe that we have a good chance this year to modify the Hatch Act—a 1939 law that has prohibited Federal employees from actively participating in political campaigns or running for office.

We passed this bill before and President Ford vetoed it. Clearly the executive—no matter who—will oppose a change in the Act. It didn't happen in Ford's day; it didn't happen in Carter's; and it won't happen now unless we make certain compromises. Don't misunderstand me. I don't think Federal employees should be disenfranchised simply because they work for the Federal Government. I support modifying the current restrictions, but not at the expense of rank-and-file employees.

Over the next two days, we'll hear about the chilling effects of the current statute on employee rights. Many ambiguities in the law result in employees simply refraining from participating in permissable activity rather than risk being penalized for violating the act. Conversely, we will be warned that if the Hatch Act is modified to permit partisan political activity employees will feel obliged to participate or run the risk of retaliation.

In my opinion the Committee faces a difficult task. How can we broaden the scope of activities permitted Federal employees without exposing those same employees to subtle, perhaps undetectable, forms of political coercion subject to tremendous problems of proof?

Mr. Chairman, I look forward to working with you and the other members of the Committee to draft a bill the President will sign.

Chairman **Glenn**. Bill and Gene, we welcome you. We know of your interest in this particular subject and we welcome your testimony.

Bill, do you want to lead off this morning?

TESTIMONY OF HON. WILLIAM (BILL) CLAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. **Clay**. Yes. Thank you, Senator.

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear to discuss H.R. 3400. The bill was passed by the House of Representatives in an overwhelming vote of almost 3 to 1. I have been actively involved with this legislation since the beginning of the 94th Congress. Ten years ago I appeared before this same Committee to support legislation to reform the Hatch Act.

Critics of the bill claim that it has been placed on a fast track without receiving careful consideration. But nothing could be further from the truth. The Subcommittee on Civil Service held hearings to receive testimony on both sides of this issue. Republicans joined with Democrats in a true bipartisan effort in drafting a balanced bill which ensures the effectiveness and impartiality of Government while allowing Federal employees the right to voluntarily participate in the political process.

Denying citizens the right to free and full participation in the political process is a contradiction in our democratic form of Government. The 1939 Hatch Act is an aberration caused by over-reaction to allegations of coercion by supervisors in the Federal relief programs not covered by the merit system.

At that time, less than 32 percent of the Federal work force was under the classified merit system. And it was not involved in any political scandals. Today, more than 78 percent are covered and protected by that system. Today both employees and the public are insulated from political influence and coercion by a system that does not require the harsh and different treatment that we are presently showing to our public employees.

Without public hearings or extensive debate, the Hatch Act put into law more than 3,000 administrative rulings. It is impossible for either the public or the workers to understand them. Mr. Chairman, the Hatch Act was so hastily passed by the Senate that if it had not been amended in the House, it would have prohibited the President, the Vice President and members of the Congress from seeking re-election or raising any funds for anybody else seeking election. That is just how hastily that Act passed this Senate; not a single debate. It passed on a voice vote.

Further, Mr. Chairman, no evidence has been produced that passage of this legislation would in any way politicize the Federal work force. There is no evidence that voluntary political activity clashes with the ability to maintain good Government. Instead, Mr. Chairman and members of this Committee, the preponderance of evidence proves that for almost 50 years we have unnecessarily infringed on the constitutional rights of free speech and free assembly of Government workers.

Allowing only the exercise of the vote is not synonymous with political freedom. Rather, it is a charade, a farce. Voting is merely the bottom line in the complex political process. Voting is the last event to take place in that tedious, long effort of successful campaigning.

Participation at every level decides who will be elected to office. Political parity depends on the right to exercise all legally permissible functions of the electorate. H.R. 3400 expressly prohibits political activity whatsoever on the job, while permitting employees to exercise their rights of citizenship off the job.

It prohibits campaign solicitation by supervisors as well as coercion or intimidation by or of Federal employees. It also prohibits misuse of official authority. The bill contains harsh penalties, including firing, fines and jail for violations.

Opponents of H.R. 3400 have raised the fear that law enforcement officials, IRS agents and the like would use their positions to coerce and intimidate the public with whom they come in contact. The example I have heard given is that an IRS agent could be investigating tax fraud in a community while simultaneously soliciting contributions.

If this occurred, I want to assure the members of this Committee, that agent would be dealt with quickly and harshly because he would be in criminal violation even of current law.

Opponents have also said that Federal employees should be allowed to run for office on the state and local level but not on the national level. Now, how can we justify such?

Congress has been criticized for providing special protections to itself. This would be another example of saying that Federal employees could run for every office but ours.

Mr. Chairman, H.R. 3400 is fair. It permits employees to run for partisan political office, as long as the campaigning does not interfere with the performance of their duties. Requests for leave without pay or annual leave to run for office may be denied by agency management based on justified needs of the public business. Currently, Federal employees can participate and run for nonpartisan offices, which constitute about 80 percent of the elections in the United States.

Mr. Chairman and members of the Committee, we have an opportunity to restore the Federal employees the same political rights as those enjoyed by others. This bill does that without jeopardizing or impairing the effectiveness or impartiality of Government. Protections provided for under the merit system will not only remain intact but will be strengthened. Allegations of politicizing the work force are completely unfounded. Insinuation and innuendo must not be accepted as a basis for compromising the rights of citizenship.

The issue is clear and concise. The Constitution guarantees freedom of speech to all Americans, including 3,000 Federal workers. I say that Federal workers are just as law abiding, just as responsible as their counterparts in the private sector, and should be treated the same.

This bill is based on the belief in the fundamental concepts of liberty and justice. The impetus for passage is so eloquently voiced in the First Amendment, which states: "Congress shall make no law abridging the freedom of speech or the right of the people peacefully to assemble and to petition the Government for a redress of grievances."

Mr. Chairman, I urge this Committee to ensure the prompt and speedy enactment of this legislation.

Senator **Pryor** [presiding]. Thank you, Congressman Clay.

Congressman Taylor.

TESTIMONY OF HON. GENE TAYLOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI [1]

Mr. **Taylor**. Thank you very much, Senator Pryor and members of the Committee, Senator Stevens.

I am extremely pleased to be here today to present my views on Hatch Act reform. I know that many of you—Senator Pryor, Senator Stevens—have played a particularly important role in the consideration of Hatch Act reform.

This is not the first time that Congress has studied the Hatch Act reform. In enacting legislation almost 50 years ago, Congress sought to protect employees and the public alike from the tactics of political bosses and coercion of Federal employees.

The strong arm tactics of the bosses to make them to contribute to partisan campaigns prompted the Congress to pass legislation banning partisan political activities on behalf of Federal and postal workers. Twelve years ago the House and Senate passed legislation repealing provisions of the Hatch Act only to see this legislation fall short of being able to override a presidential veto.

I opposed that legislation at that time. I supported the veto. But today, Mr. Chairman, we have a different situation. H.R. 3400 is a product of bipartisan work and cooperation. It enjoyed strong bipartisan support in passing the House with 305 votes. While coming from different and often opposing perspectives, the proponents of this bill hammered out a thoughtful, fair and practical solution to the issues raised by Hatch Act reform.

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[1] See p. 125 for Mr. Taylor's prepared statement.

We wanted to ensure the nonpartisan administration of Government while recognizing the employee's First Amendment right to participate in the political process. We sought to have a product that contained strong prohibitions against coercion and intimidation and the misuse of official authority or influence.

We recognize that the postal and Federal work forces of today bear little resemblance to their predecessors in the Depression era. But the highest priority was drafting a bill which spelled out in simple and straightforward terms what a Federal employee or postal worker could or could not do in the political arena.

I strongly believe that H.R. 3400 embodies those goals. One of my strongest criticisms of the present law is its ambiguity and vagueness. Plainly said, Federal and postal employees simply do not know what they can or cannot do. The present law prohibits employees from engaging in partisan political activities. The Act further defines this term by incorporating into law more than 3,000 administrative rules and decisions rendered prior to 1940.

In fact, a compilation of these conflicting and outdated, often arbitrary decisions was not even available until the late 1970s. Although the law has withstood constitutional challenges in the courts, it is high time, in my opinion, that Congress clarify and define the permissible dimensions of employee political participation.

H.R. 3400 removes the confusion associated with the current Hatch Act by applying a fair and simple principle. Federal employees would be permitted to participate in partisan activities only on their own time and not while on the job. Off the job, Federal and postal employees would be allowed to exercise the full rights of American citizenship. This is a simple and fair objective.

This is the same principle which governs public workers in 41 States. The bill contains strong prohibitions against coercion and the misuse of official authority to influence the political process. Employees are forbidden from using their official status for partisan political gain. Employees may not use official information obtained by virtue of their position for partisan purposes unless such information is readily available to the general public.

Solicitations of subordinates or while on duty or on Federal property are prohibited. In all, H.R. 3400 attempts to strike a delicate balance between the First Amendment rights of the Federal and postal employees with the public's interest in an efficiently run Federal bureaucracy free of undue political influences.

Opponents of the Hatch Act reform argue that H.R. 3400 repeals all the prohibitions against partisan political activity now contained in the Hatch Act. This argument is simply incorrect and ignores the fact that H.R. 3400 would clear up the existing ambiguities in the present law by eliminating and prohibiting all on-the-job political activities instead of continuing the current patchwork of regulations.

In addition, the legislation retained the current prohibitions on misuse of official authority and influence while focusing its reform efforts on the ban against participation in the political process.

Members of the Committee, I would simply say in closing that this has been an effort that has been hammered out on the anvil of adversity. My colleague from Missouri, Congressman Clay, and I, disagreed on past attempts to do something about the Hatch Act, but we agree on what we are doing here today.

I believe that we members of Congress have an opportunity to address a situation whose time has come. Federal employees and postal employees have a right to participate in the political process. Denied this privilege to participate, both Federal employees and the public at large are denied the right to a fair discussion of the issues affecting this country.

Mr. Chairman, postal and Federal employees care deeply about the future of our country. They care about our education, about our defense, about our fiscal responsibility.

They want only the best for this country, the same as you and I. They have a right to participate and I hope your Committee and indeed this body will favorably review the Hatch Act reform initiatives that you have before you today.

Thank you very much for this opportunity to appear before this distinguished Committee.

Senator **Pryor**. Congressman Taylor, thank you.

Senator Stevens.

Senator **Stevens**. Mr. Chairman, I think the record should show that my good friend has announced that he will not seek re-election, and that he comes over here very seldom. I am delighted he has felt committed to this issue to the extent that he has come over here today.

We want you to know we look forward to working with you on this bill and seeing to it that it passes while you are still in the Congress.

Mr. **Taylor**. Thank you very much, Senator Stevens. It has been a real pleasure to work with you during the years that I have been here working with this Committee and with the distinguished Chairman, Senator Pryor. Thank you very much.

Senator **Pryor**. Congressman Frank Horton, we are proud that you are here with us today, and we look forward to your statement.

TESTIMONY OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. **Horton**. Mr. Chairman, I thank you. I know, Dave, you have done an excellent job on this Committee. And I know Senator Stevens has also done an excellent job in representing postal employees and the Federal employees and I want to congratulate you on holding these hearings.

Mr. Chairman, I have a statement. I would like to just put it in the record [1] without reading it, and I would just like to make a little short statement with regard to my feelings about this.

Senator **Pryor**. Your full statement will be placed in the record.

Mr. **Horton**. Thank you very much.

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[1] See p. 131.

I want to join with Senator Stevens in commending Gene Taylor, our Ranking Republican. He has been in the Congress many years and I, too, am sorry that he has decided to not run again.

This, probably, could be a bill which could have his name on it and give him the honor and the distinction of having this legislation signed into law. It might be vetoed at the other end of the body, but we have already had a vote in the House and it was 305 to 112. So we have got over two-thirds and I am pretty sure we could override the veto if we have to.

Bill Clay has been a champion of "de-Hatching" Federal employees, and it was not until Gene Taylor decided that he wanted to do the same thing, I indicated my willingness to "de-Hatch."

I think that we ought not to have any second-class citizens in the United States, and Federal employees are second-class citizens because they cannot participate in the political process like everybody else can. And it is a very ambiguous situation now. There are laws that permit them to conduct political activities right now while they are on the job.

The Federal employees have indicated their willingness to give up some that they have won by court decisions in order to have no political activities on the job, provided they have the opportunity to participate in the political process like anyone else.

I think that in 1988 we have arrived at a stage where we should be able to give these "Hatched" workers the opportunity to participate in the political process, and I want to indicate my full support for the Clay/Taylor bill, and my full support for getting it through the House and the Senate and hopefully to have it signed into law so that we can give these people, who are very dedicated, hard working--I'm sure there might be some people that abuse it, just like every other class of people. There might be some that will abuse it.

But by and large, I would say that there will not be any abuses. I think it is time that we give these Federal employees the same rights that other citizens have to participate in the political process and I hope that the Senate will move expeditiously to enact this legislation.

Senator **Pryor**. Congressman Horton, thank you.

Each of you three individuals from the House have made real contributions to this legislation, getting it from the House over to the Senate. And now it is our turn. We are up to bat, and we are just going to see what we can do about it.

You know, I had the privilege of serving with the three of you in the other body, and I think back over almost three decades of running for political office and I think one of the issues that excites the emotions of people generally, just about consistently as much as any other issue that I have dealt with over those three decades, has been the issue of the Hatch Act.

Every town meeting, every little gathering, every coffee shop, every time you see someone who may or may not be a Federal or state employee, it seems like this question constantly comes up. It is like having a rock in your shoe, and it is one of those issues that does not go away.

Congressman Clay, you, Congressman Horton, and Congressman Taylor have faced this issue squarely, and I know that you have drafted and passed a piece of legislation that you think is a proper approach. We appreciate you being here today.

Because this issue does excite emotions, I think it would only be proper, Congressman Clay, if I could give you two or three fact situations, if I might, and you are perfectly free to yield to staff, but I understand that you know this bill, every comma and every section, period, clause, colon by heart. So I will ask you and your colleagues here on your right and left——

Mr. CLAY. Gene Taylor's amendment means that I do not know it's every comma and period.

Mr. TAYLOR. You know that too.

Senator PRYOR. Let me give you a fact situation. Let's say if you worked with the General Services Administration in Little Rock and there is an election going on and your supervisor comes in one morning and says, "Mr. Clay, I want you to give a contribution to the President's reelection fund."

What would happen there? Would that be a violation of the Hatch Act or a violation of any other act?

Mr. CLAY. It would be a violation under current law and it would also be a violation under H.R. 3400.

Senator PRYOR. So that relationship would not change and that situation would not change? It would still be a violation of the law?

Mr. CLAY. In no way, and if he were persistent, it is a possibility it would be a criminal violation.

Senator PRYOR. All right. Let's say that you go into the local Social Security office and you are there to pick up your check, your SSI check or whatever. And the person behind the desk or the counter in charge of handing out checks says, "I hope that you are going to vote for George Bush, or Pat Robertson, come the election next Tuesday. Now, let me see if I can locate that check. Some of these checks are hard to find."

Now, what happens there? Is this going to be an offense? Is this going to be against the law, or is your legislation going to change that?

Mr. CLAY. It is very subtle and it can happen now, but it is a violation of current law and we are not changing that with H.R. 3400. It would still be a violation of law.

Senator PRYOR. So it does not change that. All right. John Smith comes to your door, knocks on the door and says, "I am with the IRS"—that puts chills and goose bumps on all of our backbones—"and I believe I am scheduled to review your taxes next week. I am here to ask you for a campaign contribution for Congressman Jones," or whoever.

Now, what happens in that situation? Is the Hatch Act going to still apply to that case?

Mr. CLAY. Yes, Senator. But I think the answer to all of these questions go, as deeply as Congressman Horton just said. Government employees are honest, law abiding individuals. You will have some individuals who will abuse their authority, but the vast majority of them will obey the law. They are obeying the law now. They do not like the law but they are obeying it. And it is illegal under current law and it would remain illegal under H.R. 3400.

Senator PRYOR. What about a rural mail carrier delivering mail, and whether he or she would be in uniform or not in uniform—I think they do not normally wear uniforms. They deliver the mail and while you are out there at the little box picking up all the mail that is being delivered they say, "I hope you are going to register as a Democrat, and I hope that you will accept this voter registration card."

What happens in this case?

Mr. CLAY. This bill prohibits political activity while on the job. So that would be a prohibition against the——

Senator PRYOR. Does it prohibit the wearing of a button or a pin while on the job?

Mr. CLAY. Yes, it does.

Senator PRYOR. In fact, if I am not mistaken, in this area I think the House-passed legislation that these three gentlemen are advocating this morning might go a little further than the present Hatch Act.

Mr. HORTON. That is correct. By court order they can now wear buttons. They can actually wear a button.

Senator PRYOR. And this would preclude them from, prohibit them from wearing buttons on the job.

Mr. HORTON. That is one of the things that they give up.

Senator PRYOR. Senator Stevens.

Senator STEVENS. Mr. Chairman, I think inadvertently there is a little gray area here that has left the wrong impression, Congressman. The Chairman asked if he came to the door and he is known as an IRS agent who may be auditing your taxes and he knocks on the door and says, "I want a contribution for Congressman Jones."

Unless he mentions the fact that he is with the IRS, there is nothing wrong under this bill, is there?

Mr. CLAY. No. But think he said, he came to the door and said, "I am here to audit your taxes."

Senator PRYOR. "I'm here as an auditor with the IRS," I said.

Senator STEVENS. But I think the real gray area question is, he comes to the door and you know him as the guy that has been auditing your taxes. Now, let's be frank. I am a supporter of this. I have supported it the whole time I have been here.

But I think there is a gray area here under your bill in what we would call the normal conflict-of-interest situation that has to be addressed.

Let me put it this way. Suppose I am the GSA contracting officer in a small area, Alaska, okay? Anchorage—200,000 people. And I am very much dedicated to Ted Stevens' campaign and on my own private time I am going around the area to raise some money for Ted.

And there is a row of offices for the general contractors. It is my own day off and I go in there and I knock on the door and I say, you know, tell the secretary I would like to see Mr. Smith. I go in to see Mr. Smith and I say, "Mr. Smith, I am here. I would like to get a contribution for Ted's campaign."

Now, as long as I do not mention that I am with GSA, and I am the contracting officer and it just so happens I am going to have to make the decision between this guy and another guy in the next week or so, there is nothing wrong under this bill, is there?

Mr. CLAY. No. And every member of the Cabinet, every Secretary of the Cabinet could make the same approach, Senator, who has the ultimate authority for awarding that contract. And the present law does not prohibit the Secretary of Defense or the Secretary of HHS or any of the other agencies from making that same approach, very subtle like.

Senator **Stevens**. Well, I am not so sure it is so subtle when it is on a person-to-person basis where the person knows that decision is going to be made. I think we have to put into this bill some concept of the conflict of interest in the situation I am describing.

I do not think an IRS employee who is going to audit my taxes ought to come ask me for money, and I do not think that a GSA contractor who is going to pass on my contract ought to ask me for money.

I think there ought to be something in here that goes a little bit further in this area. Mind you, I support the bill, but there are some people who are raising some questions now that we have to answer. And if we do not answer them, we are going to have another veto.

We have lived through now three different attempts to change this, since I have been in the Senate, that were very real. One was vetoed. President Carter—and I remember that one—just told us to forget about it, boys. And you were involved in that. I think all five of us were. And now we have got another one, and this President is saying, forget about it, boys, in his message to the Congress the other day.

If we are going to keep the votes necessary to override this veto, I think some of these gray areas have to be addressed.

Mr. **Clay**. If the Senator would yield, these gray areas exist in the private sector as well. This Congress gives to McDonnell-Douglas aircraft company, which is in my district, billions of dollars every year—$6, $7, $8 billion in Federal moneys. They do not have a private source of income in my district. It is all Federal money, which means all of their employees are paid by the same Federal Government that pays all of our employees.

Now, the chairman of the board, Sandy McDonnell, in this gray area, as you say, can say to everybody working for him, I want you to contribute to the Mcdonnell political action committee.

That is the same kind of subtle intimidation, coercion that exists across this country in the private sector. I am not accusing Sandy Mcdonnell of doing it. I am saying that he is a law abiding citizen. And I am saying that the Federal employees are just as law abiding as anybody in the private sector, if not more so. And I am saying that we ought to give them the benefit of the doubt.

Senator **Stevens**. I think there is a distinction. Unless we realize it, we are going to lose the people around here who are concerned about the issues that I am raising. They are raising, personally, to me the gray area comments, and I think we have to address this. And with due respect to you, my friend, asking someone to contribute to a political action committee, which is one step removed from the identify of a candidate, that was the Congress' solution to deal with the very problem I am talking about.

We were on that same Committee that created those political action committee concepts and the idea was that the employee can contribute to a political action committee and the political action committee determines the candidate to which that money is given.

And whether you like it or not, there is an insulation there in terms of that person's being involved to the same extent that this bill would allow him to be involved.

One last question, and that is this. More people——

Mr. **Horton**. Before you finish, let me comment. I agree with what both of you have said. I think you have talked about a gray area, and I have no problem with the Senate looking at it from that gray area, if you can come up with language which you feel will accomplish the purpose.

It would be wrong, I think, and I think it would not be judicious on the part of that IRS agent to go out, knowing that he is auditing my return, for him to come out and ask me for money or ask another person for money when that person knows that he is the one that is auditing his return.

You know who he is. He knows who you are, and I think that is wrong.

Senator **Stevens**. That is right. We are dealing with the intersection of legality and ethics. That is what I am saying. Where the intersection comes between Government ethics and the legal aspects of this bill, I think we should make it clear that the ethical concept must prevail. The employee must keep himself or herself out of the appearance of violating that ethical concept, even though you are doing something that might be legal under this bill.

Now, we will meet you in conference, but I intend to try and get the Senate to understand this gray area. The last gray area that they are missing to me is the problem—and you mentioned it, I think two of you did—concerning running for office as a Federal candidate.

There is a distinction, in my opinion, in running for office as a Federal candidate and being able to come back to that job if I do not succeed. And I will tell you, my mind goes back to the time when I was practicing law and ran for office and one of my partners said, I will be willing to share the expenses and profits with you, but not if you are going to go out there and run for office for 8 months.

We split the partnership. But Government employees cannot split the partnership. And the people I am hearing from are people saying, "I do not intend to run for Federal office; I do not think you ought to protect my right to run for Federal office. If I decide to run for Federal office, I can leave Federal employment."

Now, I do think that we are putting too much on that right of people to run for Federal office. And, incidentally, I agree with you, Congressman, it should be their right. I think that in a perfect world there should be nothing wrong with it if you say to Sand McDonnell, I am going to go run for office and I want you to hold this spot for me until I get back. And he says, okay, I will hold it.

I do not see any reason why you should not be able to do that in the Government employment, except for the fact that most people I talked to—and I took a poll at home—say it is not important. There are so many other things that are more important to them, they do not want to lose this bill over that issue.

I think a lot of our colleagues are hung up on that issue over on this side and I think we are going to have to deal with that.

Mr. **Taylor**. If I may, Senator, I think you make some very good points and the things that you mentioned are troublesome to me. I agree, I do not think the Federal employees are concerned about these matters. They want the right to participate in the political process on their own time and their own clock.

They want to be protected from coercion, and I do not think they want to be involved in coercion, intimidation or the appearance thereof. And certainly, if the Senate can come up with some language that will remove those gray areas, I will certainly be supportive of it and I thank you for your comments.

Senator **Stevens**. Well, we will be willing to talk about it in conference.

Mr. **Horton**. I would just like to add one other thing. I think you are absolutely right in thinking that the Senate ought to look at this very carefully and try to get a bill that you feel that you can get through the Senate with enough votes so we can override a veto if necessary.

I think the time has come to do it. Gene Taylor—I have seen this man take the time to meet with the representatives from the Administration from the top to the bottom. And I am telling you, he stood his ground all the way through, and it was not easy.

I sat in the room and sweated with him as they literally indicated that they were very much opposed to it. We took the bill to the Floor and he stood up there and he took his position and I would like to see this bill not only passed by the House and Senate, but that we send this bill down there so that we can have some legislation that can be pointed to as legislation that Gene Taylor got in the last year of his time in the House.

I am sure that you have the presence of mind, the knowledge, the intelligence to be able to craft a bill which you can get through the Senate and which we can agree with and which we can get down to the President, and the quicker we do, the better.

Senator **Pryor**. Thank you, Congressman.

Gene, the way you get respect around this place is to announce that you are going to retire.

Mr. **Taylor**. It does change, doesn't it? [Laughter.]

Senator **Pryor**. You have made a great contribution.

Let me state, if I may, that we do have four more panels after this one. We are very, very indebted for the three of you coming over to the Senate this morning. I think it would be appropriate—and I do this in attempting to help treat the subject as raised very eloquently by Senator Stevens, our colleague—at this point in the record, to build this record properly, it would be a good place to insert 18 U.S.C. Sec. 594 through Sec. 606.

These, of course, are those criminal statutes relative to coercion. I think that these sections treat the issues that we have raised here this morning even more specifically than the particular sections in the existing Hatch Act or in H.R. 3400 that you gentlemen have passed in the House.

So in addition to the Hatch Act, I would place those in the record.[1]

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[1] See p. 115.

My very good friend, Senator Bingaman of New Mexico has joined us. Jeff, please feel free if you have any questions?

Senator BINGAMAN. Well, I am just here to listen. Thank you very much, Mr. Chairman.

Senator PRYOR. I will call our next panel: The Honorable Constance Horner, Director of the Office of Personnel Management; Mrs. Mary Wieseman, Special Counsel, Merit Systems Protection Board, Mr. John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice.

Once again, we would like, if we could this morning, to observe the 5-minute rule. We have a lot of witnesses this morning. We have had a good discussion thus far. There will be order in the Committee room and we will at this time hear from Mrs. Horner.

TESTIMONY OF CONSTANCE HORNER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT [1]

Mrs. HORNER. Thank you very much for this opportunity to present the Administration's views on H.R. 3400. I have a summary statement to read in the interest of time.

As you know, the Administration strongly opposes the enactment of this bill. We believe that it jeopardizes the merit basis of the American Civil Service, which is the finest support system democracy has had in its entire history. We believe it is ironic that the very effectiveness of the Hatch Act has caused some to question the need for it.

Americans are not notorious for their political memories, but there is no doubt of the role that the Hatch Act has played in maintaining the integrity and independence of a merit-based Civil Service. Before the Hatch Act, many employees had cause to fear political coercion and the public had cause to fear political corruption in the execution of the laws.

In fact, this Act was a response to the extraordinary abuses of power within some Government agencies in the 1930's, as some have mentioned, the tendency of corrupt political appointees to advance their agenda by exerting political pressure on their subordinates. But this Act was not simply a reaction to an isolated or immediate event, however dire.

The roots of the Act go back to the earliest days of the republic. Fear of corruption, or the appearance of corruption, is an enduring concern in this country. Thomas Jefferson was worried enough by the political activities of some Executive Branch officers that he issued an order enjoining them from doing exactly what this bill would allow, engaging in active, organized forms of electoral politics.

Unfortunately, however, for the next century the political spoils system was the prevailing practice. Attempts to bring it under control were unsuccessful until the Pendleton Act of 1883, which established the Federal merit system.

Teddy Roosevelt, first as Civil Service Commissioner and then as President, realized that even stronger protections were necessary. In 1901 he established what became known as Civil Service Rule 1, which, echoing Jefferson and contrary to what this bill would do, prohibited taking an active part in political campaign management.

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[1] See p. 133 for Mrs. Horner's prepared statement.

Rule 1 worked well until the rapid expansion of Government hiring at the time of the New Deal when, in agencies like the Works Progress Administration, workers were hired and fired by Party, asked to vote as their supervisor wanted, required to change their registrations, and required, in some cases, to kick back part of their salaries into campaign funds.

These abuses led to the passage of the Hatch Act by a 2 to 1 margin under President Franklin Roosevelt. Once again, there were manifestations of the problems that Jefferson recognized long before any particularly egregious abuses during the New Deal.

Since that time we have had a Government historically noted for its incorruptibility and for the confidence the public reposes in its impartiality. In all the years of politicians criticizing the bureaucracy, I know of no one of any standing who has ever alleged political corruption as a problem with the American bureaucracy since this Act was passed. This is a remarkable achievement, and I think it does not get the recognition that it deserves.

The Administration's strong opposition to this bill is shared by groups as diverse as Common Cause, the National Academy of Public Administration, the International Personnel Management Association, the American Farm Bureau, the U.S. Chamber of Commerce, the Federal Bar Association, the American Bar Association, the Heritage Foundation, the Senior Executive Association, and the Federal Executive Institute Alumni Association.

These latter two groups, comprised of many of the Government's senior career executives, polled their organizations and found 74 percent and 60 percent of their respective members were opposed to this bill.

Federal employees understand that even partial repeal of the Hatch Act will undermine working relations within the bureaucracy, as well as between career and political employees, even in the most enlightened administrations and even under the most stringent provisions prohibiting coercion or arm twisting. While there might be little overt coercion, no system of law can police the subtle coercion of the ambitious or the fearful by the powerful.

Civil servants would find themselves pressured into volunteering for campaign work and making financial contributions to curry favor with one political party or another. Employees would come to act upon the belief, justified or not, that responding to such coercion would bring career advancement while not responding would bring retaliation. In such cases, H.R. 3400's proposed safeguards against abuse would be inadequate and largely unenforceable.

Now, some have argued—and we have heard it here this morning—that current law is to confusing, that Federal employees do not understand what they can and cannot do. In fact, these rules basically follow common sense. As the Supreme Court has said: "There might be quibbles about the meaning of taking an active part in managing, or about actively participating in fund raising, or about becoming a partisan candidate for office. But there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense, can sufficiently understand and comply with without sacrifice to the public interest."

And now, for those with specific questions in their minds, the Office of the Special Counsel exists and it is available to offer help. In fact, out of 3 million Federal employees, in 1985 only 858 out of 3 million were uncertain enough about the meaning of the Act to ask for advice from the Office of Special Counsel.

Finally, the protections of the Hatch Act come at the price of restrictions only on a narrow range of organized political activities. Contrary to the argument of those who favor the bill, these restrictions do not turn civil servants into second class citizens. They are, in fact, the sign of the very power civil servants have as first class citizens.

Federal employees in a real sense have a compact with the public in which they relinquish some activist partisan political activities because of and in exchange for their extraordinary power over the lives of American citizens; their regulatory power, their policy making power, their grant and contract making power, and their law enforcement power.

If anything, they are *primus inter pares,* not second class. Breaking this compact would undermine the independence and integrity of the civil service, detract from the efficient administration of Government because of the engendered suspicion that would occur within offices, and cause the public to lose confidence in the impartial administration of Federal laws and programs.

The Hatch Act represents a fair bargain for all concerned and one which has worked well for decades, contributing to the sense of partnership and good faith between the civil service and the Nation it serves. But our responsibility here is not just to the 3 million civil servants or to the 240 million Americans they serve.

I have talked with the heads of civil services in other democracies, both old and new, enduring and fragile. The look to and honor our civil service as incorruptible. That incorruptibility gives them hope for the future of democratic government. I believe we ought to do everything we can to maintain that confidence.

I would be happy to answer any questions you have.

Senator **PRYOR**. Mrs. Horner, thank you very much.

Senator Stevens has to go to the Commerce Committee meeting at this time, and rather than proceeding in our normal order we will recognize Senator Stevens at this time to ask any questions or make any comment.

Senator **STEVENS**. Thank you, Mr. Chairman. My bill is pending over at the Commerce Committee, the Fishermen's Protection Act. Since I represent almost as many fishermen as I do Federal employees, I better split my time on this one.

Mrs. Horner, you are a good friend, but let me tell you, I think the position that has been expressed by the Administration is quite similar to telling people who are complaining about sexual harassment that the way to protect themselves is to not wear jewelry or lipstick and watch the way they dress. The problem with the approach that you have enunciated, in my opinion, is that it misses the point. There are a considerable number of Federal employees who believe that they are overregulated in the area of the Hatch Act right now.

For instance, you can put a political advertisement on your automobile if you are a public employee, but you cannot have one that is larger than 15 by 30 inches. You can have a sign in your front yard, but strangely enough, the sign in your front yard can only be 14 by 22 inches. I do not know of many people who are going to put a 15 by 30 inch sign on their car, but it makes no sense to allow a larger sign on your car than you can put in your front yard.

It is the stupidity of overregulation in the attempt to protect the employee from himself or herself that is represented by generations now of interpretations of this law. I think I am one of the few members of the Senate that served in the Executive Branch for quite some time before I came to the Senate. And I can tell you that my friends then and my friends now who are in the Executive Branch believe they are overregulated. And I think the Administration is missing the point.

We are not trying to make it possible for more supervisors to harass Federal employees. We are trying to tell the Federal employee who today is perfectly able to protect himself or herself from sexual harassment or political harassment that they have the same rights as everyone else.

I would respectfully tell you, I have been a great supporter of the President. I believe in this President, just as I believed in President Ford, and I tried to assist President Carter, but I think Presidents have misconceived this issue just as your agency continues to do.

We are trying to take, in the spirit of deregulation, some of the regulation off of individual employees. And I am sad to say, I do not see how your position today is helping those people who believe they ought to be able to enjoy more of their constitutional rights.

Mrs. **Horner**. Well, Senator, you know that I have been a very strong proponent of deregulation within the Federal personnel system, because I agree with you that Federal employees are frequently not treated like grownups because they are overregulated in their decision making authority.

Where there is a case of regulation which is extreme, the solution, it seems to me, is to look at regulations or rulings which are questionable and address them on the merits and take a look at them. But the solution is not to repeal a system which is of crucial importance to the American democracy.

I think the merit system is under attack from a number of quarters right now. One of the Congressmen who spoke earlier, or perhaps it was Senator DeConcini spoke, to our great difficulties with hiring because there is chaos in litigation over how we go about hiring Federal employees and there is great difficulty in that realm. I see that as a confluence of circumstances attacking the merit system.

Now, I think the Hatch Act—again, we see President Jefferson, we see Teddy Roosevelt, we see Presidents throughout time and three in this decade concerned about this. And I think we have to pay close attention to that because our Presidents are the greatest repositories of protection of the character and integrity of the Executive Branch.

So, I agree with you, if there is overregulation, we need to look at that but we do not need to overturn two centuries of thinking on this subject, rather than simply take a look at the specific issues that need attention.

Senator **Stevens**. Well, in the early 1970s I remember in this Committee we listened to the pleas of State and local employees who were covered by portions of the Hatch Act because their employers, the state and local governments, were receiving Federal funds. And we, in 1974, eliminated that restriction. We pour many more Federal funds into the State and local area today, and yet, I have never heard of a complaint arising out of the fact that we completely deregulated that whole section as far as participation in Federal campaigns is concerned.

Now I find that the concept of trying to extend that, with all we have learned since 1974 in this whole area, to try and find a broader area of definition of what is permissible for Federal employees is meeting a blank wall from downtown. Frankly, I do not understand it because I think that as I indicated before, there are some gray areas and what we ought to do is to legislate that—my staff points out to me the one thing we did not do in 1974 is say they could run for partisan office when we deregulated state and local employee's people who want to be deregulated ought to be allowed out.

I find that the Senior Executive Service does not want out. I am perfectly willing to say this bill does not apply to them, and let it apply to the people who want out of this overregulation. Maybe those senior executives are too close to the top of the political spectrum and believe they would be subject to more pressure than those who are not. I do not know. But the senior executives clearly do not want this bill to pass, from what I understand.

Is that your impression?

Mrs. **Horner**. It is clearly my impression that senior civil servants are strenuously opposed to this bill.

Senator **Stevens**. Well, then let's keep them "Hatched."

Mrs. **Horner**. But Senator, I do not think they are opposed on behalf of themselves only. I think they are highly responsible for the integrity of the operations they manage and they are responsible senior officials and they are speaking to their concerns about not just their personal situation but the situations over which they have responsibility.

I have to question the contention that I hear that there is a welling up of support by non-senior civil servants for change in the Hatch Act. Frankly, my mail is dramatically opposed to change. I have had in the last year only 15 letters as head of OPM from people saying they want changes in the Hatch Act. I have had hundreds from people saying they do not want change.

I know of no organization, other than the ACLU, outside of Government that supports any change. Frankly, I see no evidence of it, except organized union evidence.

Senator **Stevens**. Well, I took a poll in Alaska, for what it is worth. It has been some time now, but I did. 92 percent of the Federal employees that responded said the Hatch Act was an important issue; 63 percent favored modification; 83 percent said employees in sensitive positions should remain subject to the Hatch Act restrictions. And I think they defined sensitive as being sort of at the top of the ladder.

I think we ought to think about what these people want. But they basically do not want to have to come to your people and say, why can't I put a larger sign in my front yard than I can put on my car? Why should someone downtown be able to make that distinction?

As a matter of fact, when I served downtown you couldn't put any sign in your front yard. Gradually they started putting up bumper stickers, and then someone said, well, maybe you can get a little bit bigger and a little bit bigger. Meanwhile, by the way, you can have one even larger than that in your car.

Now, isn't that funny?

Senator PRYOR. I think you can put it in your backyard.

Senator STEVENS. Frankly, don't you think you ought to look at that? You can put a larger sign on your car, which is dangerous, than you can put in your front yard.

Mrs. HORNER. Senator, this is only one example—I heard it on the House side a year ago—and certainly it sounds egregious on the face of it, and maybe the Office of Special Counsel will be able to address that as since she has responsibility for it. I did not mean that statement unkindly, but I know that she has had to respond on this sign. There was the front yard sign and the car sign.

But, it is precisely the fact that only hundreds of people have asked for rulings from the OSC that is significant. The OSC puts out remarkably good clear pamphlets and educational programs that satisfy the vast majority of the 3 million civil servants who do not feel they need to ask about this, and it seems to me it must be in highly specialized circumstances where employees do feel a need to ask.

Senator STEVENS. I think, you know, this bill is a product of good times. In the times when I grew up in the Depression, people were so worried about their job they were not concerned about someone telling them what they couldn't do or could do. They were very concerned about their jobs.

I think more and more we have protection for Federal employees to their job to the point that the civil service concepts, the whole concept of the protection and Merit working so that people in Government service now realize that they have a right to live like other Americans and to enjoy their constitutional rights and they are beginning to blow the whistle on those of us in public office and ask, why can't we?

Now that, to me, is a product of good times and a lack of fear in terms of job security. They are not unwilling to come forward and ask us why they should not have this because they do not feel that there is a retaliation in the system. In the old days there might have been.

I do believe that the time has come for this bill to become law. We have to make some changes again, as we did in 1974, despite the feelings of the Administration and I wish you would help us rather than oppose us.

I have to go. I am sorry.

Senator PRYOR. Thank you, Senator Stevens.

Mrs. HORNER. Senator, may I just say that it is always fruitful for us to continue talking with you and to have your insights in these matters and I, for one, will continue.

Senator STEVENS. Well, maybe we will keep more dialogue. Thank you.

Senator PRYOR. Now, I am going to try to use the "early bird" rule. Senator Bingaman would have qualified if he is here. He is up now for questioning Ms. Horner.

Do you see him, Carl, under the desk or anywhere?

We will proceed then, Senator Trible, in questioning Mrs. Horner and then go to Ms. Wieseman and Mr. Keeney. Or you may address questions to the panel.

Senator TRIBLE. Let me just ask a brief question. I apologize for arriving late this morning. There is always so much going on, and unfortunately, I missed your testimony.

But this question goes to the heart of the Senator from Alaska's comments, Mrs. Horner. Much the push for reform or legislation in this area springs from the fact that current regulations are viewed as complex and confusing.

Given that, could OPM work to revise those regulations, to make them more understandable and in that fashion eliminate the need for us to act further?

Mrs. HORNER. If it became apparent that there could be useful regulatory changes, that is always an option within our purview. I think it would be useful to hear from Mary Wieseman on this subject, as the person responsible for enforcing the regulations. But yes, there is always room for discussion and potential for improvement.

Senator TRIBLE. Is it your position that there is no such requirement today?

Mrs. HORNER. I would like to hear the testimony of Ms. Wieseman on her enforcement. It seems to me that the system is functioning extremely well. And again, I have heard very few, if any, suggestions from individual Federal employees for change and therefore, to date, it has not seemed necessary for us to make change.

Senator TRIBLE. All right. Thank you.

Senator PRYOR. Thank you, Senator Trible.

Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman. Before I proceed I have on opening statement for the record.

[Senator Levin's opening statement follows:]

OPENING STATEMENT OF SENATOR LEVIN

The Committee is considering today whether it is necessary and appropriate to modify the current comprehensive restrictions on political activity by federal employees. While I am sensitive to the concerns of those who fear the politicization of the federal workforce—and I would certainly oppose moving in that direction—I believe there are a number of reforms we can make to the current law without such a result. I believe that some modification of the current Hatch Act is overdue. The current restrictions are too sweeping, confusing and inconsistent. We are needlessly denying political freedoms to millions of U.S. citizens without any offsetting public benefit.

Look at some of the unjustifiable results of current law. A Veterans Administration clerk cannot stuff envelopes for a school board candidate if that particular election is conducted on a partisan basis. A letter carrier cannot volunteer his or her free time for a Democratic or Republican campaign for Mayor of his or her hometown. A DoD computer programmer cannot work to increase voter registration for a particular party. It is difficult to see how the prohibitions on such activities are protecting either the government's or the employee's interests. The only result of such prohibitions seems to be to unnecessarily stifle the inclinations of civil servants to actively participate in the democratic process.

However, some restrictions on political activity must obviously be retained. Any form of political activity that creates the appearance of possible favoritism or conflicts of interest must be kept illegal. For example, federal procurement officers should not solicit funds from federal contractors; supervisory personnel should not be able to pressure subordinates to engage in political activity. Such limits must be carefully drawn to strike a balance between the political and free speech rights of federal employees and the public's right to an impartial government workforce. The current Hatch Act does not achieve that balance, however, and should be revised.

We have before us the bill that was approved by the House. I hope we will carefully look at Hatch Act reform. I commend the Chairman for calling these hearings. The witness list is impressive and will enable the Committee to thoroughly probe all the issues.

Senator LEVIN. I have been troubled by the broad coverage of the Hatch Act. I think it applies to situations where it really serves no significant public purpose and I am wondering whether you might not help us ascertain those particular circumstances.

For instance, would you agree that there is a difference between a supervisory and a non-supervisory person in terms of any public perception?

Mrs. HORNER. In terms of the public wondering whether that person has power over the public, you mean?

Senator LEVIN. Or power over other employees? Either way.

Mrs. HORNER. Not really, Senator, because the public often deals most immediately with those who are supervised and the supervisor may be behind the scenes. For instance, in the Social Security office it is usually not going to be a supervisor the public sees.

Senator LEVIN. So you are saying, for instance, that if a clerk in the Veterans' Administration is stuffing envelopes for some school board campaign which is a partisan campaign, that that is going to have a coercive effect on the other people stuffing envelopes in that office?

Mrs. HORNER. I think that it would have a potentially coercive effect within the Federal employment office and certainly and much more probably it would have an adverse effect on public confidence in that office.

Senator LEVIN. Let's just take those one at a time. Just take the adverse effect inside the Federal office. You have got the clerk, say from the VA, stuffing envelopes in a school board campaign.

Tell me what the coercive effect would be inside the VA?

Mrs. HORNER. The coercive effect would occur were it known to colleagues within the office that that was going on, therefore indicating a heightened, because organized, and public commitment to a political campaign.

That heightened commitment would suggest to colleagues—who might assume that they would in the future be subordinates, which can always be the case in the Federal workplace—that they might be better off, for the sake of their relations within the office, were they not to express opposition to that, for instance. It might have a chilling effect on their freedom of speech.

Senator LEVIN. Is that true in the private sector, too?

Mrs. **Horner**. I can speak only for the Federal workplace. It is very special.

Senator **Levin**. Why isn't that true in any private office?

Mrs. **Horner**. It may well be true in private offices, or it may not be true. My responsibility is for the integrity of the Federal service, and I think Government is a different thing. It has powers over the lives of our citizens that are remarkable.

Senator **Levin**. Yes, but we will get to that one in a minute, in terms of the power over the public. Let's just talk about the power inside the VA office. If somebody, a clerk, in the evenings or on weekends is stuffing envelopes in a political campaign, I do not see the slightest coercive effect on other people in that office.

It is a nonsupervisory position. I think by your taking an extreme position, you weaken the effort to differentiate between types of employees, and between, different circumstances.

I am more troubled, for instance, by an IRS agent in that circumstance. That would trouble me. But for the most part, the non-supervisory Federal employees participating in some volunteer effort in a campaign has, I think, a completely non-coercive effect. I just do not see it at all.

For you to suggest that other people in the VA office are somehow or other going to be intimidated because one of their colleagues is stuffing envelopes for a school board campaign is, I think, really offensive in that particular aspect to those other people, to those other Federal employees

I am not talking about the public. We will get to that in a moment. I am just talking about those other employees. It seems to me you are really underestimating the average person who works either in or outside the Federal Government.

I just don't see it at all and I think that if you talk to a Federal employee in that position—I am not talking about supervisory employees—if you talk to the average Federal employee and ask them, would the fact that your colleague, who is also a clerk the way you are, some weekend is stuffing envelopes in a political campaign, would that have the slightest effect on you? I think you will find 99 out of 100 saying, "I could care less."

For you to suggest that I might be intimidated in some way by that volunteer activity is completely unrealistic. I think that is the reaction you will get from the average person and I think it is an accurate reaction.

As far as the public aspect of it, I do not understand the argument. Now, take that VA clerk working in the school board campaign and tell me, you have got other people from the public, non-Federal employees working there. They may or may not know that person is clerking in the VA.

Tell me what is the coercive effect there?

Mrs. **Horner**. Senator, would it be possible for me to respond very briefly to your first contention?

Senator **Levin**. Sure.

Mrs. **Horner**. Senator Stevens talked about excessive regulation. If we were to try to make up a spectrum of the least innocuous organized partisan activity, like stuffing envelopes on Saturday night in a school board election, and make a spectrum all the way up to the most partisan, visible and consequential political activities, we could do that. But it would take tens of thousands of pages of regulations by the time we made all of those distinctions.

I am saying that the threat is sufficient in most cases, or many cases, that, since we cannot regulate precisely for so large a workforce and so many potential circumstances, that we really have to maintain this law, even though there may be some circumstances where, as perhaps in the case you cite, it seems as if it is not very threatening.

I think it represents something which would be threatening if done broadly.

Senator LEVIN. We draw lines now, don't we?

Mrs. HORNER. We try to have as few lines drawn as possible.

Senator LEVIN. But we do draw lines?

Mrs. HORNER. Yes, we do.

Senator LEVIN. And we have drawn a line which is so far away from where the line should be drawn, it seems to me you cannot argue that the problem is we shouldn't draw lines, because we draw lines now.

The problem is whether or not we have cast so broad a net here that we have in effect prevented people from exercising the basic and fundamental democratic rights in exchange for a very small public policy gain. I do see the public policy gain in supervisory positions. I do see a public policy gain with certain law enforcement people, frankly. I think there is a public policy gain.

I even can see a public policy gain in terms of soliciting contributions, perhaps. Perhaps that is the line we ought to draw.

To simply say that the average Federal employee who is a non-supervisory person cannot participate, no matter how low a level, no matter what the activity is, in a partisan political campaign seems to me to be denying 90 percent of Federal employees who could not have any coercive effect on their colleagues or on the public the opportunity to participate in some very fundamental basic democratic activities, and we are not doing it for a good enough reason.

I do not mind regulating certain people who I believe could have a coercive effect on their colleagues if they are in a supervisory position. I do not mind regulating some activity, perhaps; for instance, soliciting contributions.

I am not sure I would be happy if my letter carrier came to my door and asked me for a political contribution. So I think that kind of activity would bother me. But I do not have the slightest problem with my letter carrier stuffing envelopes in a campaign; not the slightest problem at all, I have got to tell you. And most volunteer activities do not involve an interface between a Federal employee and people that he or she services, and most employees that we have covered under the current prohibition are non-supervisory employees whose activities would have no coercive effect on their colleagues.

So, I think what we have done is that we have established the principle far too broadly, covering too many activities, too many people without an adequate compensating public purpose. What we ought to do is say, what really bothers us? Is it supervisors possibly coercing colleagues? Is it the public interface between a law enforcement Federal employee, for instance, and the clients which he or she serves? And we ought to regulate the part that really troubles us and deregulate the part which does not have any public problems. What we have done with current law is just simply asked people to give up on a basic right, I think, without adequate public policy justification.

That is kind of where I am coming from. I would urge you to help us—all three of you—to try to help us do what I believe this Committee is likely to do, which is to at least look at the House-passed bill, to indicate what parts of this bill, if not all of this bill, we like, and to address the problems deregulate the non-problem.

At least I hope that is what we are able to do in the months ahead. I know this is not exactly what your position is, obviously, from what I have heard this morning. But I still would hope you would help us with identifying those activities that are currently regulated but that we do not have an adequate public policy justification for regulating.

Senator **PRYOR**. Thank you, Senator Levin. I have sort of jumped and skipped around here for the last few minutes so we could accommodate Senator Stevens.

Now, I am going to ask Mr. Keeney and Ms. Wieseman if they would like to read or, hopefully, to summarize their statement, because we are running very far behind schedule right now. And then any questions we have, we will ask them after the statements are finished.

TESTIMONY OF MARY WIESEMAN, SPECIAL COUNSEL, MERIT SYSTEMS PROTECTION BOARD

Ms. **WIESEMAN**. Thank you, Senator. I have a very shortened version of my longer statement.

Senator **PRYOR**. Good. Thank you. We will place your longer statement in the record.[1]

Ms. **WIESEMAN**. Thank you. I appreciate that.

It is a pleasure to be here this morning to discuss the Federal Employees Political Activities Act of 1987.

In July of last year I testified before your Subcommittee, Senator Pryor, to offer my views on legislation designed to provide additional protection to employees who allege they are suffering reprisal for whistleblowing.

I said at that time that I see the primary mission of the Office of Special Counsel as including the protection of employee rights, along with the protection of the Federal merit system. In my view, enactment of H.R. 3400, authorizing involvement in partisan political activities by Federal employees to an extent not seen in over 80 years would seriously compromise the protection of employees and the merit system.

The Office of Special Counsel has been responsible for the enforcement of and issuance of advisory opinions on the Hatch Act since enactment of the Civil Service Reform Act in 1978. The OSC informs employees of the Hatch Act's restrictions on active participation in the management and conduct of partisan political campaigns as well as of those rights of personal political expressions safeguarded to them by the act.

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[1] See p. 142.

Some have claimed that employees need to be free to actively participate in partisan political activities because the Hatch Act is vague and confusing. It is also said that employees do not know what is prohibited and what is not and that they have censored their own conduct in an excess of caution.

It has been our experience that some employees have such questions because they have not read applicable regulations, contacted the officials in their agency responsible for addressing standards of conduct matters, or availed themselves of the Office of Special Counsel's advisory opinion service. Further, the fact cannot be ignored that employees sometimes knowingly protect themselves from unwanted participation in political activities by citing ostensible Hatch Act restrictions.

The OSC has filed charges of Hatch Act violations by Federal employees in only 29 cases since 1980. In that time, of the approximately 11,000 allegations of prohibited personnel practices received by the Office of Special Counsel from Federal employees, only 180 have even alleged a claim of discrimination based on political affiliation.

In a recent survey of Federal employees by the Merit Systems Protection Board, only 1 percent of the almost 17,000 respondents asserted that they had been denied a job or a job reward as a result of their political affiliation.

The most recent reliable survey of Federal employee attitudes on the Hatch Act conducted in 1979 by the General Accounting Office found that while there was some confusion over exactly what activities were prohibited, 91 percent of all employees were aware of laws or regulations prohibiting partisan political activity and 85 percent were aware of the Hatch Act.

These figures strongly suggest that the basic principles embodied in the Hatch Act have become so ingrained in public employee consciousness, so much a part of the fabric of public service, that the act is self-policing in a sense. That is, while employees may not be familiar with all of the nuances of the act, they seem to know that political activity beyond voting and the expression of their personal opinions, is a regulated area such that prudence is warranted.

From the earliest days of the republic, involvement by Federal Government employees in partisan political activities has been seen to be a danger to the integrity of the governmental service and to the public's perception of the impartiality of Government employees.

The restrictions on active involvement in partisan political activities by Government employees which have evolved over a period of 200 years reflect judgments, shared by all three branches of Government: that no public employee should be penalized for his or her political beliefs, or used as a political minion of the party in or out of power; that personal merit, rather than political allegiance, should be the basis for selection, promotion and other incidents of employment; and that the public should be held secure in the knowledge that Government employees are public servants in every sense of that term.

After consideration of the arguments for and against the dramatic changes in Hatch Act principles that would be affected in H.R. 3400, I have concluded that I cannot support the changes proposed because they would so fundamentally recast a law that has served so long and so well to protect the vast majority of Government employees and to preserve important public values.

Among my concerns is that even with the strongest of controls against coercion of political activity by Government employees, it seems unrealistic to believe that they will be oblivious to the advantages of political partisanship when competing for promotions, training or other employment benefits with other politically active employees.

Overt coercion is comparatively easy to guard against and to enforce. What is not so easily regulated is the climate that can easily arise based on the unspoken assumption that political conformity is the route to achievement and security. Such a climate would lead inexorably to subtle, self-imposed pressures on employees to conform, or appear to conform, to whatever political tendency would assure greater job security.

Much has been said about the chilling effect of the Hatch Act on employees' freedoms, including claims that employees censor their own conduct to such an extent that they refrain from engaging in even permissible political activities.

I respectfully submit, if history is any guide, that the reverse would be likely to be true if the Hatch Act were revised to permit partisan political activity. That is, employees would feel the need to engage in partisan political activity that they would not have undertaken otherwise so that what would be permitted under a reformed Hatch Act would be seen to be advisable or even required to win or maintain the favor of a politically active hierarchy in the workplace.

While it may be said that the law is adequate to guard against coercion of political activity or discrimination against employees on the basis of their political affiliation, I believe that the existence of the Hatch Act restrictions on partisan political activity has created a climate in which the opportunities for such coercion and discrimination are far fewer than they would be without such restrictions.

In closing, I believe that the Hatch Act represents a judicious balance between important freedoms and historic values that has served this country, Federal employees and the merit system well while permitting Government workers latitude in expressing their personal political opinions and pursuing permissible political activities.

I am extremely concerned that H.R. 3400 would upset that delicate balance in ways that will have serious consequences for Government employees, the merit system, and public confidence in the integrity of the Government as a whole. For all of these reasons, I do not support enactment of this measure.

Senator **PRYOR**. Thank you, Ms. Wieseman.

Ms. **WIESEMAN**. If I might, Senator Pryor, I have asked in my statement to have placed in the record our booklet which I believe says in clear language what is and is not permitted under the Hatch Act. We have given out in the last 8 years approximately 140,000 of these, and like pamphlets, to Government employees.

In addition, we have what I think is a clear statement in a poster that we also send. In fact, just last week I sent this pamphlet and this poster to all the assistant secretaries, all of the inspector generals in every agency in the Government.

And just to make one comment, it has been said that there are 3,000 regulations which are enforced under the Hatch Act. That is not really the case. While the law in 1940 included the 3,000 decisions of the Civil Service Commission to flesh out what the Hatch Act restrictions on political campaigning and active political campaign were, the current regulations are in four pages in the Code of Federal Regulations. These regulations were reviewed by the Supreme Court in 1974 and found to be clear to the person with common understanding.

If I just might say one more thing about the signs. As Ms. Horner mentioned, we have issued not just since I have been Special Counsel, but over the history of the Office of Special Counsel, almost 700 written advisory opinions with respect to the Hatch Act. We turned over all of those advisory opinions to the House Committee at the time of the last hearing.

Those two opinions have been cited back to us a number of times and have appeared in newspaper articles. What I want to say is that the inches, the diameters, the attempt to quantify is unfortunate in those advisory opinions. They are not regulations. They are advisory opinions on what the act is.

What we were trying to say, what the attorney who wrote the letter was trying to say—and if I may use a "for instance" in the yard sign, the dimensions of the yard sign—what was said is a yard sign of approximately 14 by 22 inches is permissible, while a yard sign of billboard dimensions, 22 feet by 40 feet, would not be permissible.

That is the kind of dimensions he was attempting to use to illustrate what is personal expression of opinion as opposed to actively campaigning in concert with a political campaign. As I say, it is unfortunate that the example of inches has gotten into the dialogue to the extent it has.

Senator PRYOR. We thank you very much for your statement. The pamphlet on "Political Activity and the Federal Employee" will be placed in the appropriate place in the record.[1] "Political Activity in the State and Local Employees" will be placed in the appropriate part of the record,[2] and "Hatch Act Facts" will be placed in the appropriate part of the record,[3] which to me further demonstrates the mass of confusion out there for the average Federal employee to have to have hundreds of thousands of dollars for publications to explain what they can or cannot do.

Now, let me refer you to page 6, for example. Let's look at page 6, in the second column on the right:

"Question: May an employee write a letter to the editor of a local newspaper expressing an opinion on a partisan issue?"

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[1] See p. 453.
[2] See p. 466.
[3] See p. 479.

This is from our Government. This is explaining what he or she as a Federal employee can or cannot do when writing a letter to the editor.

"Answer: Yes, but employees must not engage in concerted solicitations of votes for or against partisan candidates or political parties. [In support of a candidate or political party, the employee may neither write one letter and cause it to be distributed to five papers, nor may the employee write five consecutive letters to one newspaper.]"

Can he write three?

Ms. **Wieseman**. Let me just respond. The number of letters, really, is not the issue, Senator. This booklet, when it is revised, will take out that parenthetical. And the reason the parenthetical was placed in there at the time this was drafted was to try to give some guidance. It is possible that if one letter was in concert with a political campaign it could be a violation. In order to determine whether there is a violation of the Hatch Act, we must look at the facts and circumstances of the case.

We give advisory opinions to give some idea of what the outlines of the area are.

Senator **Pryor**. I think, if I may interrupt, and we must go on, but if I were a Federal employee and I worked for the Bureau of Mines, Department of Commerce, or the Department of the Interior, and I got all of this and I went home and read it, I think, frankly, what I would do is not even think about becoming involved in the political process. I would sort of give up and resign myself.

I think it is very, very confusing. In fact, it is oppressively confusing to the average employee.

Ms. **Wieseman**. Senator, I just might comment that there are limitations in the English language, as Justice White mentioned in the Letter Carriers case, but if you compare the Hatch Act and our booklets and the regulations to other areas which the Government regulates—Internal Revenue Service, which touches all Americans, Federal election regulations, standards of conduct regulations, Ethics in Government Act regulations—there are nuances in any statute and that to change the entire system because of some perceived confusion in the enforcement of the act, I don't think is warranted.

Senator **Pryor**. We thank you for your statement and comments. Senator Levin.

Senator **Levin**. Just one question, Mr. Chairman, of Ms. Wieseman.

Can a Federal employee now independently, not in concert with any other organization, distribute his or her own literature?

Ms. **Wieseman**. Campaign literature?

Senator **Levin**. Yes.

Ms. **Wieseman**. I would have to know what literature is being distributed. It specifically says in the regulation, campaign literature may not be distributed. The Federal employee cannot run for office so it could not be his own campaign literature.

Senator **Levin**. No. My question is his or her own designed literature.

Ms. **Wieseman**. His or her own designed campaign literature?

Senator LEVIN. Yes. In other words, I put out a brochure as to why I think a certain candidate is the greatest candidate and I walk up and down my block handing it out.

Ms. WIESEMAN. No. A Federal employee may not do that.

Senator LEVIN. Even though I design my own literature?

Ms. WIESEMAN. That is right. That would be soliciting votes for a partisan—I have to say—if it is a partisan political campaign, of course, then that would be soliciting.

Senator LEVIN. But that is not expression?

Ms. WIESEMAN. That goes over the line from personal expression to campaigning.

Senator LEVIN. So I can put the sign in my yard?

Ms. WIESEMAN. Yes.

Senator LEVIN. That is expression. And I can write the letter to the editor, you say?

Ms. WIESEMAN. Yes.

Senator LEVIN. I can write the letter to the editor but I cannot hand that letter to my neighbor?

Ms. WIESEMAN. Yes, you may hand that letter to your neighbor.

Senator LEVIN. Can I hand it to my block?

Ms. WIESEMAN. That becomes a question of the facts and circumstances surrounding how you are doing it.

Senator LEVIN. I gave you all the facts right then. It is not concerted.

Ms. WIESEMAN. Yes. I think you probably could.

Senator LEVIN. Then I can hand it to my whole area?

Ms. WIESEMAN. That would be a real question of whether you are soliciting votes for a candidate at that time. And if, in your literature——

Senator LEVIN. This is a letter to the editor soliciting votes for a candidate?

Ms. WIESEMAN. Well, Senator, I guess we are getting down to the question we are balancing here. We are balancing private expression——

Senator LEVIN. I just want the answer to the question. I know it is balancing. But, can I write a letter to the editor soliciting votes for a candidate?

Ms. WIESEMAN. You may not solicit votes for a candidate in your letter.

Senator LEVIN. I can say, he or she is the greatest candidate?

Ms. WIESEMAN. Yes.

Senator LEVIN. But I cannot say, vote for him or her?

Ms. WIESEMAN. That is right.

Senator LEVIN. So that you are going to start censoring the content of my letter?

Ms. WIESEMAN. It is not the content. What you are doing with the letter is soliciting votes for a partisan political candidate, and that is prohibited.

Senator LEVIN. I just wrote the letter. I can say, he or she is the greatest candidate; that is okay?

Ms. WIESEMAN. Yes.

Senator LEVIN. I cannot say at the end, so I hope everybody will vote for him or her; is that right?

Ms. WIESEMAN. That would be a question at that point in soliciting votes in your letter.

Senator LEVIN. I am asking you for your answer to the question.

Ms. WIESEMAN. Whether we would prosecute that case or not? That is certainly a different question.

Senator LEVIN. No; whether it is legal or not, not whether you would prosecute. Is it legal?

Ms. WIESEMAN. I think that would—I hate to give opinions here in front of the Senate without the advantage of looking at prior opinions, but in my view that would be going beyond the line to say, I ask your support for the candidate, vote for this candidate, I encourage you to vote for this candidate. That is soliciting support for a partisan political candidate.

Senator PRYOR. Could the Federal employee write a letter to the local newspaper saying, "Please don't anyone vote for George Bush; please don't vote for this guy. He will not be a good president. Please don't vote for Bob Dole." Could they do this and have it printed in the paper?

Ms. WIESEMAN. They could do it and have it printed in the paper. Whether it would be a violation of the Hatch Act in soliciting——

Senator PRYOR. I am not soliciting votes.

Senator LEVIN. You are de-soliciting.

Senator PRYOR. I am de-soliciting votes. [Laughter.]

I am saying these guys are no good; I work for the Federal Government and I know for a fact that this Government is corrupt and no good and George Bush, or Bob Dole, or Pat Robertson or——

Senator LEVIN. Add some Democrats quick. [Laughter.]

Senator PRYOR [continuing]. Gephardt or Dukakis or whoever are not going to be good for this country. What about that?

Ms. WIESEMAN. That would be a permissible use. And let me say with Senator Levin, I do not want to be as——

Senator PRYOR. You do not advise any Federal employee to do that, though?

Ms. WIESEMAN. We do not advise them what to do. They tell us what they want to do.

Let me say in response to Senator Levin, to give opinions with respect to the particular content of personal expression, we do not do that. We do not want to do that.

With regard to the issue of the letter to the editor, the Civil Service Commission historically had found a letter to the editor in itself to be a violation of the Hatch Act. In 1955 there was a District Court case in the District of Columbia that held that a letter to the editor was permissible First Amendment conduct.

It is in that context that we are attempting to advise employees on what is the scope and range of that permissible First Amendment protection of personal opinion, what that encompasses and what goes over the line to become campaigning for a partisan political candidate, which is prohibited by the Hatch Act.

Senator LEVIN. I just have one other question. You have said, basically, that I can write the letter saying, this person is the best candidate. I cannot take the next step and say, I hope everybody will vote for him or her.

That is the line you draw, which I think is not a line which is, frankly, either consistent with the Constitution or one that is particularly enforceable.

But, in any event, take the letter which simply says, I think this candidate is the greatest candidate. It does not go over the line. Can I distribute that letter in my entire neighborhood?

Ms. WIESEMAN. If it is not in concert with a political campaign you could.

Senator LEVIN. Yes, on my own.

Ms. WIESEMAN. Yes.

Senator LEVIN. I can distribute that letter? That is okay?

Ms. WIESEMAN. It is your personal expression of your political beliefs. You are entitled to your personal expression of political beliefs.

Senator LEVIN. I can express a political belief but I cannot express the hope that somebody will vote for a candidate?

Ms. WIESEMAN. Well, actually, your personal hope—I think we are coming to a point where we may be trivializing the difference, Senator. What we are trying to do is say where the line is between personal expression and——

Senator LEVIN. Why do you say that is trivial as to whether or not I can express the hope that people will vote for a candidate?

Ms. WIESEMAN. Well, expressing the hope that people will vote for a candidate?

Senator LEVIN. I hope you will vote for this candidate; he or she is the best candidate. You are saying I cannot do that?

Ms. WIESEMAN. You are campaigning for that person at that point.

Senator LEVIN. Yes. I am out there in my neighborhood saying, I hope you will vote for X.

Ms. WIESEMAN. That is campaigning and that is prohibited by the Hatch Act.

Senator LEVIN. Yes. I cannot do that. But I can say that this is the best candidate?

Ms. WIESEMAN. In my view, this is the best candidate. That is personal expression of opinion.

Senator PRYOR. Senator Trible?

Senator TRIBLE. No questions.

Senator PRYOR. We are proud also that Senator James Sasser of Tennessee has joined us.

Senator Sasser, would you like to make a comment or ask a question of the panel?

Senator SASSER. Well, Mr. Chairman, I have an opening statement that I would ask unanimous consent be included in the record.

Senator PRYOR. Without objection, it will be included in the record.

[The opening statement of Senator Sasser follows:]

OPENING STATEMENT OF SENATOR SASSER

Good morning, Mr. Chairman. Let me add my welcome to the witnesses who are with us this morning. The issue we are meeting to hear testimony about is one, I know, on which many people of good intentions disagree. I look forward to some enlightenment from both sides.

Faithful and impartial administration of our Nation's laws, by its civil servants, is an objective on which all agree—at least in the abstract sense. How we obtain that standard, however, and avoid political partisanship in the selection, promotion, and performance of Federal and postal workers, requires concrete choices.

Now, the Hatch Act was such a response by the Congress. Like any law, it was a response to the conditions of its time. I think there can be no question that it has served to instill, among the men and women who devote their careers to civil service, a deep-felt sense that partisanship, while it is appropriate in the selection of lawmakers, should be foreign to the administration of the law.

The question we deal with is this: with nonpartisanship the norm among our rank-and-file bureaucracy, and merit promotion the standard for over three-quarters of its members, is a blanket prohibition against political involvement, off the job, still realistic or necessary? Is some relaxation of these restrictions appropriate? And can it coexist with the continued enforcement of nonpartisanship in the workplace itself?

Undoubtedly, some members of the civil service will prefer to shun political involvement, regardless what we do about House bill 3400.

But for those civil servants who support the purposes of this legislation, the rights they seek are certainly not trivial. True, they now have the basic rights to vote, to contribute to candidates or their choice, and to express, at least passively, their political opinions. But it is also apparent that in the pluralistic America of today, our citizens place a premium on the ability to work in concert with those who share their opinions on the issues, in order to affect the political process. And those may be issues, from the standpoint of the civil servant, which may have nothing to do with the particular job he or she does for the taxpayer, but which they feel deeply about nonetheless.

Now, we must also consider the protection of Federal workers from coercion, and protection of the public from biased administration of the law. So I am going to be very interested to hear from opponents of this bill, in some concrete detail, why they are convinced that coercion and abuse of Federal workers would be inevitable byproducts of this bill. By the same token, I look forward to an explanation, from those who support H.R. 3400, as to how its enforcement provisions will afford adequate protection to civil servants while leaving them free to pursue their political beliefs away from their jobs.

Thank you, Mr. Chairman.

Senator **Pryor**. Mr. Keeney.

TESTIMONY OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. **Keeney**. Mr. Chairman, you have my statement.[1] I would like to summarize it within your 5 minute limitation.

At the inception it might be appropriate to mention briefly my professional background. First, I have been a career Government employee for 37 years. Second, for a substantial part of my career I have supervised the enforcement of the criminal counterparts of the Hatch Act.

Mr. Chairman, based upon my experience in law enforcement, I join in the strong opposition to the passage of this legislation. H.R. 3400 would greatly increase the likelihood of public corruption and would upset two principles which have evolved as central to the operation of the Federal Government, namely, nonpartisan administration in enforcement of Federal laws and the concept that advancement in the Federal civil service is based on merit rather than on party loyalty or political activism.

Supporters of H.R. 3400 described it as extending the First Amendment rights of Federal employees. While I have no intention of getting into an extensive discussion of constitutional law, I would make two points. First, the Supreme Court has twice upheld the constitutionality of the Hatch Act. And second, H.R. 3400 itself raises serious separation of powers and First Amendment issues in the limitations it would place on the activities of high level political appointees of the Executive Branch.

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[1] See p. 164.

Let me turn to our law enforcement concerns: public corruption. That is the administration of public office for personal gain rather than for the common good. It has been a concern since the early days of our Nation. In fact, Congress has enacted several laws proscribing and punishing acts of corruption.

For example, 18 USC 600 makes it an offense to promise public employment as a reward for public activity, and 18 USC 601 makes it an offense to solicit contributions for a candidate or political party by threatening to deprive a person of public employment if he or she does not make the contribution.

These and similar laws in Chapter 29 of Title 18 are aimed almost entirely at the person offering the employment or seeking the contribution. The Federal employee is regarded as the victim. But the Hatch Act takes a different approach. Its proscriptions are directed at the employee.

The Hatch Act clearly spells out the types of partisan political activities—and incidentally, I disagree with what the Senators are saying; I think that one can find out what one can and what one cannot do as a public employee—activities in which public employees may not engage; activities like soliciting or handling political contributions and circulating nominating petitions.

Therefore, the Hatch Act, while not the only Federal statute aimed at corruption in the civil service, may well be the most important.

If I had to set forth, Mr. Chairman, the principal salutary effect of the Hatch Act in one sentence, it would be this: It creates a climate in which the things proscribed by the other public corruption statutes are not likely to be attempted.

Unfortunately, the amendments in H.R. 3400 would alter this climate without adding any new provisions to safeguard public employees and public programs from political pressures. While the bill purports to add such safeguards, its provisions in this regard do nothing more than replicate existing criminal laws such as 18 USC 600 and several other provisions dealing with public corruption.

In all candor, H.R. 3400 would make criminal prosecution of these cases in this area more difficult. For example, subsection 2(c) of the bill narrows an extremely important provision in the Federal criminal code, 18 USC 602, which for nearly a century has prohibited Federal employees from soliciting each other for political contributions. The section has been interpreted to require some degree of coercion in making the solicitation.

Section 602 would be revised so that such a solicitation for a political contribution would only be proscribed if it is also proscribed by 5 USC 7323 or 7324, as amended by this bill. Section 7324 deals with political contributions.

However, section 7324 only makes it unlawful for a superior to ask a subordinate for a contribution. A solicitation for a contribution by a subordinate or an employee of equal rank is not covered, so long as the solicitation is made away from the workplace, such as at a coffee shop across the street from the office.

The only way such a solicitation would be covered would be if the Government could prove that the solicitation was accompanied by, "official authority or influence," under the new section 7323; a difficult concept in cases where the solicitation is by an employee or superior.

At first glance one might conclude that this really is not such a big change since, as I mentioned, 18 USC 602 has been interpreted to require an element of coercion. But on reflection, the change has the net effect of interjecting partisan fund raising into the Federal workforce to an unprecedented and unjustifiable degree, in my opinion.

The reason this is so is because the bill would eliminate the present flat-out ban in the Hatch Act on a Federal employee's requesting or receiving a political contribution from another employee. Thus, by making the Hatch Act prohibitions coincident with the reach of the criminal statutes, H.R. 3400 in effect eliminates the dike or buffer zone that the Hatch Act provides between Federal employees and political solicitations.

Senator PRYOR. Mr. Keeney, I apologize to you. Do you mind submitting your full statement for the record?

Mr. KEENEY. That is fine, Senator.

Senator PRYOR. Let me see if there might be a question from either Senator Trible or Senator Sasser?

Senator TRIBLE. Mr. Chairman, I have no further questions of this panel. I want to thank them for their presence and testimony today.

Senator PRYOR. Senator Sasser.

Senator SASSER. No questions.

Senator PRYOR. Senator Sasser and Senator Trible and our distinguished panel, in the northern part of my State of Arkansas there is a very small mountain county. I will not mention its name. Half of the county is Democrat and half is Republican. You will not believe this, but they have a Republican cafe and a Democratic cafe. They have a Republican dentist and a Democratic dentist. They have a barbershop that is Democrat and one that is Republican.

There are a lot of Federal employees in this area. One of the great sports of the political season in that county is to try find someone in violation of the most minute parts of the Hatch Act so that the other side can turn them in and expose them for all of their vile corruption in the political process.

Now, I think sometimes we carry this whole thing a little bit too far, and I think what we are attempting to do with the changes that have come from the House is to see that there is a balance and to see if we cannot come out of this thicket, this wilderness, with an approach that would represent truly common sense.

Mrs. Horner, I know you stated that the legislation that is now on the books does represent common sense. I respectfully disagree there. But I really think that we have got to seriously look at this matter, and I think this has been a very interesting part of our hearing this morning.

Mrs. Horner, do you have any final comments? I do have a question in writing and I do not mind telling you what my question is.

It is about the recent testimony—and I will just let you answer that when you can in the next several days—of the Social Security Managers Association testifying before the House Ways and Means Committee last year and the Deputy Administrator of the Social Security Administration ultimately threatened the Association's Board with destruction of their organization if they continued to speak out in public in opposition to the Administration's practices.

I think this is another form of intimidation we have got to look at. And my question would be, what do we plan to do about that type of intimidation?

We will excuse this panel. Thank you, and we will ask our next panel to come forward.

Our next panel, Panel No. 3, is Mr. Ron Swisher, National League of Postmasters; Mr. Earl Ogle, National Association of Postmasters of the United States; Mr. Rubin Handelman, National Association of Postal Supervisors.

Gentlemen, once again, I am going to try to implore you to observe the 5-minute rule, as we are very quickly running out of time. If you would summarize your statement or take 5 minutes to read what portions you desire, your full statement will be placed in the record.

Senator SASSER. Mr. Chairman, if I may, I would like to extend a particular welcome today to a distinguished constituent of mine, Mr. Earl Ogle, who is the President of the National Association of Postmasters. Mr. Ogle is a very distinguished postmaster from Sevier County. That is a mountain county way up in eastern Tennessee. The story there is that Earl Ogle can move mountains in that county, and he has proved that by moving one and putting a post office right on top of what used to be a mountain.

We welcome him here today, and I am looking forward to his testimony.

Senator PRYOR. We will start, then, with Mr. Swisher.

TESTIMONY OF RON SWISHER, PRESIDENT, NATIONAL LEAGUE OF POSTMASTERS

Mr. SWISHER. Thank you, Mr. Chairman. I am Ron Swisher, President of the National League of Postmasters, representing over 27,000 postmasters nationwide. I also represent over 40,000 Federal and postal employees enrolled in the Postmasters Benefit Plan.

I welcome the opportunity to testify before this distinguished Committee this morning on such a vital issue as Hatch Act reform, and I thank you, Mr. Chairman, for holding these hearings so expeditiously.

I have submitted my prepared statement,[1] and I will summarize, Mr. Chairman.

On this date in 1836, the seige on the Alamo began, and 100 years later in 1936, in a little house on the prairie, another seige was born. On this, my birthday, I say that I am proud to be one of the leaders in a seige against the Hatch Act as we have known it for the past 50 years.

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[1] See p. 196.

I believe that in 1936 the Hatch Act was necessary. In 1939, I know that it was passed. In a very few years, it became more and more unnecessary, but as many such acts, it did not change with the times. This is 1988, Mr. Chairman, and I say that the Hatch Act is archaic and unconstitutional.

I want to stress that the postmasters that I represent are not in favor of a return to political patronage. We just would like to reform the Hatch Act to make it more workable. I have heard the testimony this morning and your questions, and I believe many of my arguments have already been brought out.

I would like to say to you that if you can find out from the opponents of H.R. 3400 what changes they would like that would make this reform of the Hatch Act more amenable to them, we are more than willing to talk about it. And we would encourage you to talk to them. We just strongly believe the Hatch Act needs reform so that Federal employees, whether they be postal or other Federal Government employees, need to have the right to engage in political activity off the job.

Thank you.

Senator PRYOR. Mr. Swisher, thank you very much.

Now, we will call Mr. Ogle.

Mr. Ogle, Senator Sasser had to go to another Committee. He wanted me to apologize for him leaving our Committee hearing before you had an opportunity to testify.

TESTIMONY OF EARL W. OGLE, PRESIDENT, NATIONAL ASSOCIATION OF POSTMASTERS OF THE UNITED STATES

Mr. OGLE. Thank you, Mr. Chairman.

Mr. Chairman and members of the Committee, I am Earl Ogle, President of the National Association of Postmasters of the United States. My organization wishes to express its thanks to all of you for giving us the opportunity to testify on behalf of Hatch Act reform legislation.

We, the postmasters of the United States, believe that H.R. 3400, a bipartisan bill passed by the House of Representatives during the first session of the 100th Congress is a good bill. It bans partisan political activities on the job, protects workers rights to become involved in partisan politics off the job, or to remain uninvolved. It also reinforces penalties for misuse of official authority.

I am not going to quote history or statistics with regard to the Hatch Act. I am quite sure the Committee is aware or will be made aware of these facts. Rather, I am going to focus my testimony in 3 areas that I deem critical to these hearings. They are coercion, participation and protection.

The Hatch Act is almost 50 years old. Given the political climate and circumstances at that time, enactment of Hatch Act legislation may have been appropriate. But times have changed, policies have changed, as have attitudes and perceptions. We are, indeed, an enlightened and more open society, one that encourages involvement by all of our citizens.

Opponents to reform use the threat of coercion by superiors as a primary reason to retain the status quo. The use of coercion by superiors on subordinates is almost non-existent. In fact, of the 484 complaints of Hatch Act violations since 1979, 30 were filed and none of the 30 were for coercion. We do not believe that the lack of coercive behavior by supervisors was because of the penalties implied in the Act. Rather, we believe it is because of organizations such as my own and unions within the postal and Federal community who protect our members from such abuses, that coercion is not prevalent. More importantly, Title 18—which you mentioned earlier—of the United States Code, which ensures protection from these abuses more effectively than the penalties imposed by the Hatch Act must also be considered a restraint to abuse.

The issue of coercion espoused by opponents of this legislation is ludicrous at best. Coercion exists in a corporate world with much less protection for its employees than that provided by Title 18. Furthermore, the emphasis on coercion adds an element that if not so serious would be amusing. It assumes that the political appointees that are in a position to coerce employees would themselves violate the Hatch Act as well as the criminal sanctions provided under Title 18.

It is not the postal or Federal employees who should be shackled by constraints. The focus should be placed on those who are in a position to violate our laws. One must wonder who are the victims here: those who are being coerced or those doing the coercing. To say that the Hatch Act protects an employee from coercion is a fallacy. Coercion exists and will continue to exist in one form or another in the public and private sectors.

With regard to participation, I am an active postmaster on leave without pay to serve the members of my organization. And I would have this Committee know that, as an active postmaster, I served as President of the Chamber of Commerce in Gatlinburg, Tennessee, and as a member of the City Council. It is important for this Committee to understand that one of the primary reasons for my withdrawing from public service in my community was because of the increasing possibility that I could or would be violating the Hatch Act.

In addition, most of the local offices are becoming increasingly partisan. For example, I had a rural carrier in my office who also served as a Justice of the Peace. That office eventually became partisan, and the rural carrier was faced with a choice of having to withdraw from running for that office or give up his position with the Postal Service. No one in this room can doubt the trend toward politicalizing local offices will be continued. And to meet that trend, there is change in the wind.

My own State of Tennessee, along with 40 or 41 other States, have passed legislation which indicates that public employees may engage in most voluntary off-duty political activities in relation to a partisan election campaign. I believe these State have recognized the injustice inherent in gagging any of our citizens.

And, finally, there are two focal points in this legislation that should not be ignored. First, I mentioned earlier that I served as President of the Chamber of Commerce in my community. I am aware that the Chamber is opposed to this legislation. I do not share that view. In fact, I wonder why they oppose Hatch Act reform. But the Chamber of Commerce, like most groups in this great country, have a First Amendment right to speak out, and I respect that right. Conversely, postal and Federal employees should have the same right. And, secondly, the law is archaic. The real political intimidation comes from those who would see it continued.

Consider, if you will, the fact that the regulations that evolved as a result of the Hatch Act are so complex and confusing that postal and Federal employees who want to participate have a fear of jeopardizing their positions, although the activity may well be within the restrictions of the Hatch Act. The alleged protection then becomes a barrier to participation.

Mr. Chairman and members of the Committee, this is a historic piece of legislation because of the bipartisan effort that brought it to fruition. We implore the Senate to join hands with their colleagues in the House and expedite passage of the Hatch Act reform.

I would like to express my thanks to the committee for giving me the opportunity to testify here today. I will be glad to answer any questions.

Senator PRYOR. Mr. Ogle, thank you very much.

Mr. Handelman.

TESTIMONY OF RUBIN HANDELMAN, NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

Mr. HANDELMAN. Mr. Chairman, I will also shorten my testimony and request that it be submitted in its entirety into the record.[1]

Senator PRYOR. It will be printed in its entirety.

Mr. HANDELMAN. Mr. Chairman and members of the Committee, I am Rubin Handelman, President of the National Association of Postal Supervisors, an organization representing 45,000 mid-level managers in the United States Postal Service. I thank you for the opportunity to present the Postal Supervisors' stand on the Hatch Act.

My colleagues and I are firm in the belief that limitations on any citizen's political rights diminish our freedoms. That is why we are quick to oppose the Hatch Act as it now stands. We know, as you gentlemen must, that this 1939 law is in bad need of reform. Therefore, we support the Hatch Act Reform Bill, H.R. 3400.

This reform would permit Federal and postal employees to voluntarily engage in partisan political activities after work and on their own time. It would also strengthen protections to the public against political abuses and coercion of the work force. This would make clear what at present is not.

As you know, the Hatch Act was enacted in 1939 as an overreaction to coercion and kickbacks placed on Federal employees and public assistance recipients. In short, it was designed to stop the spoils system under then-President Franklin Roosevelt.

Times and conditions have changed since then. The Federal work force has expanded in size and comes under a system of merit protection. In 1939, given the unsophistication of the national media, the absence of employee protection agencies and smaller congressional investigating staffs, the Hatch Act was a useful and even good law. Indeed, we approve and endorse the strengthened provisions of H.R. 3400 which protect employees from political coercion. It becomes very clear what you can and cannot do as an activist in the Federal and Postal Service. The current law as it stands, however, does not really protect us; it silences us.

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[1] See p. 203.

Mr. Reagan has said, "We do not want to risk a situation in which Federal employees believe that their advancement depends upon espousing particular view, perhaps the political views of their superiors." This view is childishly naive. Even in the most politicized agencies, who can imagine any such coercion by a supervisor? How long would it be in 1988 before such political coercion appeared on the front page of the New York Times, the Washington Post, and become a feature story on 60 Minutes? How many phone calls to congressional offices would need to be made before you gentlemen would begin an investigation? Would not that supervisor be hauled up here and made to answer the charges? It takes no imagination to see that such a Government supervisor, using such tactics, would also hurt the campaign he or she was trying to support in the first place.

Let us be very clear about this: Hatch Act reform is not a Federal not Postal Service issue, nor is it a Democratic or Republican issue. It is an issue of political freedom and individual liberty. As presently written, the law is unclear, overly broad, and is a patchwork quilt of over 3,000 administration rulings cause contradiction and confusion. The harsh penalties discourage political activity when you are not sure what is legal or not.

Federal and postal workers may speak publicly on political subjects but not at political gatherings; they may attend a political convention but not serve as a delegate; they may sign a nominating petition, but not circulate it. And it goes on and on. This confusion results in a chilling effect and discourages even the limited participation allowed under the law. A similar chilling effect is achieved when Government employee leaders are prosecuted under the Act as in the cases last year against three union presidents. Since these men were already on leave without pay from their Federal jobs, this shameful act must be interpreted as hypocritical and ironic indeed. Or perhaps it was just coincidence that the three unions supported Mondale over President Reagan in the 1984 presidential elections? The President can only point his finger at a mirror if he wants to rebuke someone for practicing political coercion and intimidation.

At a time when less than 60 percent of the eligible voters choose to case their ballots, our country can ill afford to deprive society of the energy and ideas of people who want to be involved, especially those who devote their lives to Government public service. Add to this the fact that most Western democracies allow Government employees to engage in partisan political activities, and that many States have broader political freedom State and local employees than are now enjoyed by Federal and postal workers.

Make no mistake. There are many difficult issues facing this Congress; Hatch Act reform is not one of them. It costs nothing. Indeed, it would save money by eliminating the investigation, prosecution—I would say harassment—of Government and postal employees. H.R. 3400 merely restores to 3 million American citizens the political rights and freedoms upon which our Nation is based.

Let us not make Federal and postal workers feel like Eastern European counter-revolutionaries engaging in surreptitious and illegal political activity, making them peer worriedly over their shoulders and attempting to avoid the Government's investigation. Instead, let us include civil servants in the political debate. After all, in the context of a political campaign, who can better address the problems of the mail at the middle management level than the postal supervisors? Or, for that matter, on food poisoning than the Federal meat and poultry inspectors? Or veteran's health care than the doctors in the VA hospitals? Or better address the quality of service from Social Security than those employees who answer the Social Security phones. The list can go on and on.

Freeing Government and postal employees to contribute fully to our country's political debate can only benefit the entire Nation. I urge the passage of H.R. 3400 by all those committed to clear, meaningful laws, justice, political freedom, and individual liberty.

Again, we appreciate this opportunity to express our views on this important issue, and I would be very happy to answer any questions.

Senator PRYOR. Mr. Handelman, thank you for your statement. We thank the three panelists who have come today.

Senator Trible.

Senator TRIBLE. I have no questions.

Senator PRYOR. Senator Glenn? You ought to be running this show now. I will sit back and let you do it.

Chairman GLENN. Our problem is we have too many hearings this morning. I had to be out here, and I have to leave again in a few moments.

I do have one question, though. What do you think is likely to happen if we pass this? Are you going to see a great wave of new political activity in your unions and the people that you represent? Or is this something that would gradually occur over a period of time?

In other words, I am trying to get a feel for the people——

Mr. HANDELMAN. If I could answer that, Senator Glenn, I will be the first answer.

Chairman GLENN. Are they champing to do things, or is it sort of something that——

Mr. HANDELMAN. I do not think you will see any Federal employee running for office. I do not think anything will be different than what it is now except that they will not have to look over their shoulder or think that they are doing something improperly.

The lady that was sitting here just a little while ago, there were some questions asked by Senator Levin, and she even had difficulty answering some of the questions. And she is supposed to know the laws. How am I supposed to know the law if she does not herself know whether it is right on some of the answers that she had to give to questions?

I think most of our Federal employees out in the field feel that way. They do not want to do anything that is illegal, and they do not know what is legal and what is not.

Mr. SWISHER. Mr. Chairman, I would hope that we could encourage enough political activity to get our members out in greater numbers to vote. Right now there seems to be too much apathy among Federal employees because of the harness and the bridle put on them by the Hatch Act. But as far as political offices, I do see many postal and Federal employees becoming more involved in their local community political activities: school board, city council and so forth.

Chairman GLENN. Your people surely know right now they are not prohibited from voting.

Mr. SWISHER. No. But there seems to be some apathy because they cannot do anything up to that point, or so it is assumed by many of them. Because as was brought out earlier, they know there are regulations against doing this and against that, and they know that something else is all right; but they do not know what that is, so they just leave it all alone.

Chairman GLENN. Just one other question. Are there reporting mechanisms currently available through the unions to detect or prevent coercion? What are they and how extensively have they been used? Are there any?

Mr. HANDELMAN. We are not union, so we would not be able to answer that question. I do not know where there are or not.

Mr. SWISHER. I really know of none, and there are none in my organization.

Mr. OGLE. I would think that if a member of an organization felt that he was being coerced and reported it to an officer, that certainly we would look into it. But our organization, of course, is a management organization.

Chairman GLENN. Thank you.

Senator TRIBLE. May I make just one observation? I am struck by the fervor of this gentleman's comments. I must say I represent probably more Federal employees than anyone else in the Senate. There are days when I think I represent all Federal employees. I am simply not hearing from these folks about repeal of the Hatch Act. They are not writing to me. I travel throughout the State. I have hundreds of town meetings throughout my State attended by Federal employees, and Federal retirees. No one is talking to me about repealing the Hatch Act.

Now, I know this is an invitation for thousands of letters, and I will just crank up my computer and add those names to my list. And they will hear from me for at least the rest of this year, maybe even longer. But I just do not see Federal employees standing up and speaking out and telling me, as their elected representative in Washington, that they are unsatisfied with the present system; that they feel that their rights at citizens are denied; and that they want a change in the Hatch Act.

I just thought I would make that observation and let you respond to it.

Mr. HANDELMAN. I would like to respond to it, Senator. It is very possible that you are not getting the amount of letters you would expect, or you are not even getting the answers that you are expecting, because Federal employees out there, the way things are presently with the Hatch Act, I think they may be a little afraid to write to anyone.

Senator TRIBLE. Not so.

Mr. HANDELMAN. Not so?

Senator **Trible**. I can guarantee you they are not afraid to write Congressmen and Senators.

Mr. **Handelman**. I do not know. I say the same thing representing 45,000 supervisors, and I know we have things that are improperly done in various areas of the country. And when you go out there, they say, whoa, I do not want to complain because I do not want to kill my chances for upward mobility. And I do not know how many younger Federal employees you have versus the older, but the older will talk sooner than that. So maybe the amount of letters you are getting are from the older; and if you have a lot of young Federal employees out there, they are not writing to you because they are leery. They all want upward mobility.

Mr. **Ogle**. I think as leaders of the community most postmasters would certainly like to participate in things they feel worthwhile for the community. And more and more, as I stated in my testimony, politics within small communities, as Senator Pryor just stated, are becoming partisan. You have Democrat barbershops and Republican barbershops.

I think it is real important that people who have Government jobs, should be leaders in their community not be denied this right.

Mr. **Swisher**. I would state that you are quite perceptive. I believe that you and I have seen this much the same. It is a little worrisome to me that some of our members have become so apathetic, they are willing to hide their responsibility behind the overall cloak of the Hatch Act. And I see some of them who do not even want to get in there and guess which is right and which is not right. They just say, "No, I cannot get involved in politics."

But, sadly enough, it causes them to be less interested in the entire political process in that they absolutely still have responsibility to, even to the vote.

Mr. **Handelman**. Senator Pryor, I have one thing to ask you. I was listening to the story you told, and Earl just mentioned the same thing. I was sort of concerned and worried. You mentioned the two doctors, a Republican and a Democrat. What would happen if the Democratic doctor was on vacation and a Democrat would get ill? Would he call the Republican doctor?

Senator **Pryor**. I do not think they play it quite that hard.

Mr. **Handelman**. Oh, okay. [Laughter.]

Senator **Pryor**. Just for certain illnesses. There was a rumor recently that because the owner of the funeral home is a very, very strong Democrat a Republican may try to put him out of business. So we may have a Democrat and Republican funeral home also in that community. It is quite a fascinating place, I might add.

Mr. **Ogle**. In our area, we have them switching over sometimes because we would rather see one of them go than one of us.

Senator **Pryor**. Gentleman, we appreciate this panel. Let the record show that Mr. Edward Foley also appeared with the panel. Mr. Foley, we appreciate your attendance.

Senator **Pryor**. We will now call our fourth panel. It is 5 minutes after 12, and we will go through this panel. First, we will have Mr. Joseph Fisher and Mr. Ray Kline, National Academy of Public Administration; Ms. Ann McBride, Common Cause; Mr. C. A. Howlett, U.S. Chamber of Commerce; Mr. Morton Halperin and Mr. Anthony Califa, American Civil Liberties Union.

We will call on Mr. Fisher at this time.

Senator TRIBLE. Mr. Chairman?

Senator PRYOR. Yes, Senator Trible.

Senator TRIBLE. May I just say a word of welcome to Joe Fisher. It was my pleasure to serve with Joe Fisher for a number of years in the House of Representatives. And although I think it is fair to say we probably canceled out each other's votes thousands of times, I have the greatest respect for this gentleman. He is a man of intellect and integrity, and I am pleased to see him here today.

Senator PRYOR. We welcome you, Mr. Fisher, along with your colleague.

TESTIMONY OF JOSEPH L. FISHER, CHAIRMAN, BOARD OF TRUSTEES, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION,[1] ACCOMPANIED BY RAY KLINE, PRESIDENT

Mr. FISHER. Thank you very much, Senator Trible. It is an honor to be here.

I have been before Committees many times on both sides of the tables, but this is the first time I have had a chance to appear before a Committee as Chairman of the Board of Trustees of the National Academy of Public Administration.

This academy is charged by the Congress. It operates more or less the way the National Academy of Sciences operates. It is made up of elected members, senior experienced persons in the public adminstration fields, includes two or three Senators and a number of your staff people.

We have considered the Hatch Act revisions rather carefully, first at a meeting of a standing panel on public service that we have; second, at a Board of Trustees meeting in January; and, third, at a smaller meeting 2 weeks ago of academy members especially interested in this issue. On all three occasions, we have concluded, by really an overwhelming majority, that the adverse consequences of permitting broader Federal employee participation in partisan campaigns and elections so outweigh the potential benefits as to make major change in the law at this time unacceptable.

We have come to this conclusion after working it over rather carefully with a large number of people who are experienced in the Federal service. And you may say, well, they are mostly senior people and so on, and that is true. But they have been administering very large Government organizations, not only Federal but State and local and non-profit and even private. So there is a weight of judgment here that I think is of considerable significance.

On the fundamental issue of permitting Federal employees to engage while off duty in the full range of partisan political activity, there is one clear consensus among both supporters and opponents. It is that any change must recognize the need for balance between the first of Federal employees to participate in the political life of the Nation, and the right of the public to a competent, impartial, non-partisan, incorruptible administration of the law.

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[1] See p. 208 for Mr. Fisher's prepared statement.

There is no magic here, but we have to find the best balance. And it is our judgment by a large, large majority the balance is better the way Hatch Act is now, despite all manner of problem, than it would be if we moved significantly in the direction of the legislation before you.

My statement goes into that in considerable length. Then I follow that with a variety of examples of which you have heard many and you have brought up many yourself.

I would like to just mention one or two things quickly. One is, in focusing on the supervisors, as we have been doing, it is important not to lose sight of the employee down here. And if he or she is an ambitious kind of person, he or she would probably want to engage to the fullest extent possible, under whatever the law is, in political activities, partly to exercise the rights of citizenship and so on, but partly in many cases to find advancement, promotion, special treatment. This is a severe risk, in my judgment.

Chairman GLENN. Joe, could I butt in just a minute? I have to be at another meeting in about 4 minutes, and I did want to ask you a question on this.

It seems that back in the days when the Hatch Act was first passed, you only had 30 some percent of the people that were under civil service and protected some way. So the bulk of them were outside, and they were fair game. There was a lot of coercion. There were a lot of things. Now, we have gone up to about 78 percent of the people who are now covered under regular civil service laws, which should give them pretty good protection. It seems to me the balance has really shifted here.

Did NAPA take a good look at that as far as the numbers go? Because if there is a case to be made for doing away with the Hatch Act or altering it in a major way, it seems to me that it has gone from a huge problem one way—we corrected it with the Hatch Act—and now over the years everything shifted over to civil service. And the areas still open for coercion and all the bad things that happened before the Hatch Act are for a fairly small number of people. We are restricting political activity for a large number to take care of this much smaller problem. Did you look at it just from a numbers standpoint?

Mr. FISHER. Yes, we did. Ray Kline, who is with me and is president of the academy, may wish to speak briefly to that.

Do you have the numbers in your head?

Mr. KLINE. I did not bring the numbers along, Senator, but it certainly is an element to be thought about. In terms of those who are in and those who are out, I would like to make a comment, sir. This is in the context of roads I traveled in the past. Just like other witnesses, I was in the Federal service 33 years. My last job was running the General Service Administration. And Senator Pryor had a few examples earlier on that addressed that agency as to what may happen in certain cases.

I think that as this Committee considers changes to the law or throwing it out, it must bear in mind with equal weight the question of perceptions. Let us imagine a case from the sovereign State of Arkansas where a procurement officer for the General Services Administration is the county Democratic chairman and came out quite strongly for Senator Pryor. Then after the election is over and Senator Pryor wins and returns to Washington, that procurement office has an honest-to-God competitive procurement. And as most GSA procurement officers are, he does his level best to come up with the right judgment on behalf of these United States.

If it turns out that a Democratic supporter wins that procurement and a Republican does not, even if Senator Pryor has absolutely knowledge of this transaction going on, I know the head of the agency is going to hear about this as the perception of some sort of favoritism at work, which would be promptly turned over to the Inspector General—not to mention other paths that the loser of this procurement may choose to travel on the instant procurement.

The point I would like to make, sir, in terms of other kinds of people being swept into this, one way to approach it is on a hierarchical basis. Before you came in, Senator Glenn, the thought was if the people in the upper echelons do not want to be de-Hatched, keep them in and take out those below. Well, there are certain key functions in the administration of this Government that have got to be looked at functionally in terms of perceptions as well as in terms of actualities, and not solely on a heirarchial basis.

And in terms of how the numbers are running, Senator Glenn, to get precisely to the point, we could not find any magic demarcation in terms of how the world has changed. Maybe there are entire phalanxes of people in the Postal Service who should be without. But for the cultures I know extremely well, I would not pretend for a minute to try to draw those lines for you here.

Chairman GLENN. Okay. Well, I did not mean to interrupt Mr. Fisher's presentation there too long. I just wanted to make sure. It would appear that there is a big, huge block of people who are being unfairly dealt with. That was back when the Hatch Act was passed. Now, over the years it has passed where most of the people, three-fourths of them, more than three-fourths of them, almost 80 percent, are adequately protected. So we have gone to where there are very few at risk, if you want to put it that way. And so we are saying we will not have certain political rights here for a great number to protect this small number.

Now, maybe that is valid; I do not know. But it seems to me that is the major issue that we are addressing here.

Turn off his red light there because I interrupted his time here. Let him go ahead with his statement. That is fine.

Mr. FISHER. I am about finished.

Chairman GLENN. Thank you.

Mr. FISHER. We will give further attention, Senator Glenn, to whether you could cut if off horizontally in some way. Just off the cuff, I see many difficulties. Earlier, we got into quite a discussion on drawing lines. As anybody in administration knows, you have to draw lines. When you do there are always inconsistencies and even a bit of foolishness in it. This would get us into drawing lines in a big way, unless we just took 80 percent or some percent, which probably would not be very good.

While we really think we do much better to stick with the present Hatch Act than go for the bill that is before you, there are some things that could be done to improve the situation. And some of them do not require legislation at all.

For example, we could insist more than the Merit Systems Protection Board and its Office of Special Counsel adopt a more positive approach to clarifying and making known the existing rights of Federal employees to participate in the election process. Our membership thinks that considerable gains can be made along this line, and we would in doing that perhaps take care of a lot of Senator Levin's problems.

Second, we could mandate vigorous, appropriate, more consistent enforcement of existing sanctions against unauthorized activities. Where such activities are made known to the Special Counsel, the investigation should be prompt and fair, and the appropriate remedial actions should be actively pursued. We think gains can be made there.

Finally, before any expansion of permitted political activity, we really should learn more about employee attitudes concerning the proposed changes. We know the views of those polled by the Senior Executive Association and several other groups of that kind, but we do not know enough about the views of rank-and-file civil servants on this important subject.

Senator Trible said he has only heard from a handful, yet he represents hundreds of thousands, I suppose, Federal employees. I know of no polls that have been taken. It may be that there is not very much discontent here, and certainly we ought to find out about it.

Well, that concludes my summary, highlight of the statement. Of course, we would be pleased to answer any questions.

Senator PRYOR. Thank you.

Our next panelist is Ann McBride of Common Cause. Ann, welcome.

TESTIMONY OF ANN McBRIDE, SENIOR VICE PRESIDENT, COMMON CAUSE [1]

Ms. McBRIDE. Thank you. Mr. Chairman, we are very happy to be here on behalf of Common Cause, and I really appreciate this opportunity to testify on the Hatch Act. We believe that any proposals to change the Hatch Act must be approached with really great care.

We have been concerned as an organization about the Hatch Act since the very beginning of our organization, and we believe that a Government that is fairly and ethically administered is absolutely essential to our continued democracy.

Therefore, we have really been concerned about the bill that passed the House and efforts that would have radically revised the Hatch Act. For nearly 50 years, through Democratic and Republican administrations, we believe that the Hatch Act has protected the Federal workers, and also has served the country well. We believe that efforts to abandon the fundamental concept of an unpoliticized civil service are dangerous and they are unwise. We believe that with the basic restrictions on partisan political activity repealed, there really will not be procedural or other safeguards sufficient to protect against subtle and implied coercion of Federal workers.

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[1] See p. 215 for Ms. McBride's prepared statement.

In our view, without the basic Hatch Act protections, there are no effective safeguards—and that includes the safeguards that have been talked about this morning in the House bill—that can adequately protect against coercion that is much more likely to be subtle rather than blatant. Federal workers who face subtle pressure—and we are not talking about threats of transfer or any sort of direct coercion, but the subtle coercion of being friendlier to those who attend a fund-raiser, to those who it appears somehow that the good jobs go to those who help our candidates of your boss' party. That kind of subtle coercion we do not think can be enforced. And even if no coercion were intended, in a situation where partisan activity off duty is allowed, Federal workers could easily just get it into their heads that political activity on behalf of the party in power was the best way to assure career advancement.

That path, we believe, would really lead to a demoralized civil service and the undesirable politicization of the Federal bureaucracy.

In addition, Mr. Chairman, we believe that the Hatch Act's removal of the basic protections would increase the potential for building a powerful political operation based on the use of Government workers and could erase the narrow line between lawful administrative discretion and political favoritism.

Now, everyone says that cannot happen in 1988. You are not going to have a president try and turn the bureaucracy into his or her political force. But, you know, it was not very long ago when Nixon presidential assistant John Dean put out a memo saying, "How can we use the Government machinery to screw our political enemy?" And Fred Malek, another Nixon assistant, put out the infamous "Federal Political Personnel Manual."

Now, here is what Malek says. He says we need a comprehensive plan for using the civil service for "maximum political benefit." Malek goes on in his memo. He notes with displeasure the fact that the civil service is generally insensitive to political need, and says we must call on all of our potential patronage "resources"—jobs, contracts, job subsidies, bank deposits, social need programs, public works projects, transportation, public relations offices, and the general execution of Federal law.

So it is not outside of the realm of comprehension, and it certainly was not very long ago in my political memory that this was attempted to be done.

As was mentioned this morning—and I want to summarize—Federal workers do have basic rights of citizenship. And what the Hatch Act does is to prevent them from the most active forms of political activity.

Let me just give you some examples that we think could happen, that we could just throw out, if the Hatch Act were repealed. We have talked about an incumbent president seeking to enlist Federal workers. What kind of protection would there be against the implicit participation? What kind of unfair advantage does this give the incumbent?

Let me give you another one. A supporter of an unsuccessful candidate seeks but is not awarded a Government contract. A decision is made by a Government department whose officials have participated in the campaign of the winner. How does the appearance of retribution or favoritism be avoided?

And there are other examples. If you put into real practical application, not only what actually happens but what is the appearance of impartiality, and how are the workers protected?

Let me finally say, Mr. Chairman, that we really are dealing with apples and oranges here when we talk about this complicated law. We agree it is complicated. We believe that it can be simplified, that it can be made clear, and we think that OPM should be asked to do this by the Congress. And I like the notion of more affirmative education of people of what their rights are. That is a very different question of just en masse radically removing Hatch Act restrictions.

We continue to oppose that, but we obviously look forward to working with this committee in any way we can as you move forward and look at this very difficult and important question.

Thank you.

Senator PRYOR. Thank you very much.

We now call on Mr. Howlett, representing the U.S. Chamber of Commerce.

TESTIMONY OF C.A. HOWLETT, U.S. CHAMBER OF COMMERCE

Mr. HOWLETT. Mr. Chairman, thank you. We, too, appreciate the opportunity to appear before you.

I am assistant general manager of the Salt River Project in Phoenix, Arizona, and a member of the Public Affairs Committee for the United States Chamber of Commerce, representing out 180,000 members on proposals to amend the Act. You have our full testimony.[1] I will summarize.

The Chamber supports the Hatch Act, which protects Federal civil service and postal employees from undue political pressure and coercion, and believe that no law should be enacted to permit the solicitation of financial or any other form of support for political candidates and political or party organizations by such employees.

We specifically oppose enactment of House-passed H.R. 3400.

The Hatch Act was passed 48 years ago to protect Federal workers from political pressure by elected and appointed officials. The purpose was to separate the work force from the elected leadership. In much the same way that the civil service has protected Federal employees from the spoils system, the Hatch Act has protected these workers from exploiting their office or being exploited by others.

The Chamber has several concerns about amending the Hatch Act. These include the use of Government positions to coerce contractors to contribute to candidates; the exertion of pressure on citizens dealing with the Internal Revenue Service and other agencies that dispense grants or loans having undue influence over their applicants.

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[1] See p. 223.

In signing the Hatch Act into law, President Franklin Roosevelt said, "Improper political practices can be eliminated only by imposition of rigid statutory regulations and penalties by Congress."

In 1973, the Supreme Court, in upholding for the third time the Hatch Act's constitutionality, declared, "It is in the best interest of the country, indeed essential, the Federal service should depend on meritorious performance rather than political service . . ."

Supporters of the bill are quick to mention penalties for misusing the new-found privileges that it would grant. The envisioned enforcement should be compared with the enormously difficult job of enforcing laws relating to sexual harassment. Innuendo and subtlety are extremely difficult to document.

Violations can be expected to occur, and large numbers may be undetected and unsolved. The American taxpayer will suffer because the productivity of the Federal work force will suffer.

If the Federal worker were truly disenfranchised as a participant in politics, congressional reformation might be necessary. However, Federal workers can actively participate; the law only restricts the partisan activity. Under the Hatch Act, Federal employees may: join political clubs; contribute money to political candidates and organizations; sign nominating petitions; campaign for or against ballot propositions; attend political fund-raising functions; wear badges or buttons; register voters; express opinions; and register and vote.

The major prohibitions of the Hatch Act are: soliciting campaign funds from fellow workers; using Federal office for political purposes; taking an active part in partisan campaigns; and running for office on a partisan ticket.

Federal workers will simply not have the necessary protection from political harassment if the Hatch Act amendments are adopted. Therefore, if Congress enacts these changes, the Chamber believes that Congress should immediately establish a panel to determine the impact of these amendments on the operation of Federal offices.

President Reagan, in his 1988 legislative messages, has urged opposition to any Hatch Act amendments: "We do not want to risk a situation in which Federal employees come to believe that their advancement depends on espousing particular views, perhaps the political views of their superiors. Neither should the electoral campaigning be allowed to mar cooperation between the political appointees of the President and the civil service establishment, a cooperation crucial to good Government."

To remove the protection of the Hatch Act would send the U.S. Government back down the road to the spoils system, flower funds, and politicization of Federal agencies.

The Chamber knows no compelling reason to amend the Hatch Act. While it is true that there are certain restrictions on Federal workers' political involvement, it is also true that they are a unique group of employees. We have heard about the balance which must be maintained. We support that concept of balance. Their job is the efficient operation of the Federal Government, with equal treatment of all taxpayers regardless of political persuasion. The Hatch Act amendments in 3400 will remove protection from Federal workers and from taxpayers.

Congress should act to strengthen our Government by rejecting the Hatch Act amendments. Our Federal workers need and want a harassment-free workplace. The American taxpayer deserves no less than top performance. The Hatch Act was passed to cure the serious problem of political coercion in the Federal work force. H.R. 3400 would allow that problem to reemerge.

Perhaps the Hatch Act is the victim of its own success. Our memories are short. We believe that without the Hatch Act many of the spoils system abuses will return. The subtleties that we have heard about today are truly in that field. I was chief of staff to a mayor of a large United States city. I can tell you that similar experiences occur on an everyday basis. Informal workplace subtleties are impossible to prosecute.

Thank you.

Senator PRYOR. Thank you, and thank you for your views and the association's that you expressed.

Next we have Mr. Halperin, on behalf of the American Civil Liberties Union.

TESTIMONY OF MORTON H. HALPERIN, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION [1]

Mr. HALPERIN. Thank you, Mr. Chairman.

Earlier today, one of the administration witnesses suggested that the ACLU was the only organization other than those directly affected by the Hatch Act who supported this change. I do not think that is true. But even if it was, it is not an unusual position for the ACLU to find itself in. We are often the only ones willing to defend those whose rights are violated. We take pride in that, and it has often turned out to be the case that we are right. And the groups that are oppressed are right, and we think this is such a case where people are being denied their constitutional rights for reasons which are totally unpersuasive.

It was also mentioned earlier that the Supreme Court upheld the constitutionality of the Hatch Act, but we have also heard a lot today about facts and circumstances. And they are relevant, enormously relevant, to the question of whether the Hatch Act is still constitutional. Because when it was passed and even when the court considered it, we were in a very different situation. Moreover, in our view, it is the Congress' responsibility to consider the facts, to take testimony as you are doing today, and to reach your own judgment as to whether or not the prohibitions that you put on the activities of Americans is, in fact, appropriate given their constitutional rights of free speech.

We think if you look at the balance here, it is impossible to conclude that there is a specific and sufficient compelling State interest which justifies these restrictions.

Now, we have been told many times—the President said in his message and we have heard again today—that the compelling State interest is to prevent the coercion of Federal officials who will be subtly coerced and who will not resist the pressure from somebody who they work with to support a political candidate. The problem with that argument is that, as we have heard today, it proves too much. If that coercion was possible, it already exists.

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[1] See p. 230 for Mr. Halperin's prepared statement.

As we were told today, there are many things that Federal employees can now do. For example, they can write a letter to the editor. If what you wanted to do was to coerce a Federal employee to do what you wanted him or her to do, you would say, "Where's that letter? You know Senator Pryor is the best person who has ever been in the Senate of the United States. You cannot go stuff envelopes for him, but you are allowed to write a letter to the local newspaper saying he is the most wonderful Senator that has ever served in the Senate of the United States."

Senator **Pryor**. Sounds awful good to me.

Mr. **Halperin**. That is right. And I have not seen that letter. Now, that is perfectly legal now. And if the subtle coercion is going to occur, that is the kind of thing that would occur. That is the kind of thing you would say. Not, "You go out there and be the assistant manager of Senator Pryor's campaign"; but "You write that letter and go around," as Senator Levin brought out, "and hand it out to your friends. Make sure they know that you think he is the person."

I believe Federal workers resist that now, and I believe they will resist the pressure to do other things which would become legal under this statute.

Moreover, even if they wanted to be coerced, even if what we have heard here is a Federal work force of Federal workers so cowed that they are looking to find out who they should be coerced by, they would have trouble figuring out whose coercion should they accept. Should it be the President's political party? Well, for most Federal workers, they are far enough away from the President that that may not be right. In any case, occasionally in this country, we change the political party that controls the White House. Not as often as we used to, but occasionally.

Second, should they be the coercion of their supervisor? Well, supervisors come and go. There is a turnover in the Federal work force. It was suggested today that Federal workers would be coerced by their co-workers because the co-worker might some day be their supervisor. Well, I think if you looked around at these various forms of pressure, what you would conclude is what I believe to be the case: That it is impossible to calculate who you ought to please if you want to go forward. And you are likely to do what I believe most Federal workers will do anyway, which is to follow their own conscience and their own political beliefs in deciding what kind of political activity to engage in.

It is an insult to the Federal work force to suggest that they will look around and figure out how do I get promoted, and therefore I am going to do it. In any case, if they wanted to do that now, they would write that wonderful letter.

Now, it has been suggested that Government contractors might be giving campaign contributions because they believe that will help them get contracts. I find it incredible that somebody has suggested that that does not happen already, and that that is not a process well known to Government contractors and others who want favors from the Federal Government. The notion that a letter carrier is now capable of stuffing envelopes is going to lead a Government contractor to make contributions, when the Government contractor does not make that now, is, I think, absurd.

Now, we are also told that it is not clear how many Federal workers want this freedom. I would suggest that that is totally and completely irrelevant. The question of whether they want it or not, what percentage of Federal workers want the right to participate in the political process is irrelevant. If there is some—and I think it is clear that there are many—they have the right to do so even if other Federal workers do not want this right and would prefer even the protection of being able to say I am not allowed to participate in the process. Unless there is a compelling State interest, and I would say none has been presented here, that justifies the existing restrictions, I think Congress has the obligation and the duty to remove them and to allow those number of Federal workers, whatever the percentage is, who want to more actively participate in the political process, to do so.

So I would urge you to move this legislation quickly and to change the law. Thank you.

Senator PRYOR. Thank you, Mr. Halperin. Thank you very much.

I just want to thank the panel. You presented some very different points of view for the Committee this morning, and that is what this system is all about. We deeply appreciate your being here. We look forward to working with you in the weeks ahead on this issue.

We thank this panel.

We will now call Panel No. 5 to the table: Mr. Vincent Sombrotto and Mr. Steve Thrower, National Association of Letter Carriers; Mr. Dallas Fields, National Rural Letter Carriers Associations; and Mr. Moe Biller, American Postal Workers Union.

We will call on you in the order that I named you, Vincent Sombrotto first. We welcome all of you this morning.

TESTIMONY OF VINCENT SOMBROTTO, NATIONAL ASSOCIATION OF LETTER CARRIERS

Mr. SOMBROTTO. Thank you very much, Chairman Pryor.

My name is Vince R. Sombrotto, President of the National Association of Letter Carriers, AFL-CIO. The NALC represents more than 310,000 active and retired letter carriers. With me is Steve Thrower, who was a letter carrier while serving as the mayor of Norman, Oklahoma, from 1983 through 1986.

I thank you for inviting me to testify on the Hatch Act reform, and I would like to summarize the testimony that I will be giving.

Senator PRYOR. Your full statement will be printed in the record.[1]

Mr. SOMBROTTO. In the House debate, Republican Representative Gene Taylor, along with many of his colleagues, said that he had opposed previous Hatch Act reform legislation, but not H.R. 3400. "This is legislation whose time has come," he said.

Mr. Chairman, more Republicans joined the Democrats on this bill than in all the previous attempts spanning a decade. It was reported out unanimously and passed overwhelmingly, 305 to 112.

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[1] See p. 243.

Senator Hollings wrote, "The bill contains"——

Senator **Pryor**. Hold on, if you would, Mr. Sombrotto. I think that something is being staged here, and I just want a little explanation.

Mr. **Sombrotto**. Well, that is for the benefit of some of the doubters that say that Federal employees, particularly the members of the National Association of Letter Carriers, do not favor Hatch Act reform and have no interest in it. We recently did a poll of our members asking them to select who they would like to see as President. And on that ballot was every announced candidate, both Republicans and Democrats. And at the bottom was a question, "Do you support reform of the Hatch Act?" and there was a yes or no box. What you see is 93 percent of the members of my union who responded said yes; and, of course, it is a democracy, and 7 percent are allowed to be wrong. They said no.

But in any event, that is what we have done, and we have got empirical evidence that the membership of our union—that is, the rank-and-file membership—support Hatch Act reform.

Senator **Pryor**. I just did not know whether someone was going to jump out of those boxes or not. I just wanted to be prepared.

Proceed, Mr. Sombrotto.

Mr. **Sombrotto**. Senator Hollings wrote, ". . . the bill contains several safeguard provisions such as tightening the restrictions on political coercion as well as strengthening the punishment if a violation occurs . . ." These safeguards ". . . will maintain the neutrality of the civil service system . . ."

Mr. Chairman, the same prohibitions currently in effect in the workplace are unchanged. "Hatch Act reform prohibits political activity while on duty . . ." I fully support that prohibition. I want to keep partisan politics out of the workplace.

Representative Clay noted that "There is no evidence that voluntary political activity in any way diminishes the ability to maintain good Government . . ."

Working with the Congressional Research Service, Representative Constance Morella contacted officials in Maryland and Virginia, which allow leisure-time political freedom. None could remember a single complaint of political coercion involving Government employees.

Over 40 States have lifted their "Mini-Hatch Acts" on State and local employees. There is no evidence of abuse or violations.

The conclusion is political participation works. "In 1988, America should not be trying to restrict political participation," Senator Lowell Weicker said. "We should be doing everything possible to increase political involvement."

It is an absolute outrageous disgrace for us to go around the world, as we should, properly so, asking for countries to have democratic processes and allow for democratic-type governments to take hold of the welfare and the future of their own citizens, when in our own elections we cannot get more than 55 percent of our citizens to vote. And we have these kinds of restrictions that discourage people from being involved in a political process.

I do not know why myself or Brother Biller here or Steve or Dallas Fields cannot run to be a delegate to the Republican National Convention or the Democratic National Convention; why we cannot participate in the whole political process that determines who are the candidates we are going to vote for. Under the present system, we sit back and somebody else chooses who the candidates are going to be, and we are given in some cases a Hobbesian choice. We think that is totally unfair.

Common Cause argues that running for a non-partisan position, such as a school board member, is acceptable. But if the same school board position is a partisan race, it threatens the foundation of the civil service. This is nonsense. We are responsible citizens who serve our country well. Letter carriers vote in partisan elections. Do they give poor service to the other side? No, because we are professionals as are Federal employees.

There is less likelihood of a Federal employee violating the Hatch Act than a person at the local level. The reason is that local level is more hands-on. The success of the local level of loosened restrictions provides a good lesson for Federal reform.

The OMB and Justice letter opposing H.R. 3400, which the administration submitted on the House side, asked: What if someone working for the Census Bureau is a campaign manager? That employee has an inside track on census information. My response is the census is public information. If the information is secret, obtained illegally or withheld from the opponent wrongfully, the person is in violation of the law under current or proposed legislation.

If we condemn on the basis of expertise, do we disqualify a teacher who runs for the school board? If hazardous waste is a campaign issue, should employees of a sanitation company be prohibited from volunteering on their own time in a campaign? Of course not. But if the same employee doing the same work is Federal, it is a Hatch Act violation.

I agree with Congresswoman Morella when she said, "Our Constitution begins 'We the people' . . . not 'We the people except those in Federal service.' "

We can create a lot of "what-if" situations. Most employees in the OMB/Justice examples would be guilty under the current law and H.R. 3400. OMB and Justice admit that "The bill includes a number of provisions intended to ensure that any political activity is conducted off the job, and to prevent conflicts between official duties and political activities . . ." Unfortunately, those agencies declined to participate in drafting language. We could have benefited from constructive input.

Our opponents charge that reform needs more debate. I was in high school when the debate began, and that was in 1937. In 1966, a bipartisan commission recommended reform. We have been debating that for 22 years. Congressman Taylor said, "The fact is, the bipartisan committee cleaned up the bill before we brought it to the floor."

Opponents argue that employees do not want reform. How paternalistic. You have that evidence.

Times change. In 1939, postal employees had few safeguards. Since 1970, that is not the case. The current law is a morass of over 3,000 rulings. Does it make sense that a letter carrier can attend a rally and cannot hold a sign? And can be prosecuted if a bumper sticker is more than 15 by 30?

You heard those examples.

Senator Pryor. Mr. Sombrotto, I hate to do this, but our red light is now on. I will print your entire statement in the record. We are very appreciative of you bringing——

Mr. Sombrotto. If I just could make one more comment, Senator. On this card, interestingly enough, just in the last few days, three separate incidents, one in San Antonio and one in Miami, members of my union asked me if by filling out this card were they violating the Hatch Act. So that gives you an idea of the confusion that the Hatch Act has created for Federal and postal employees.

Thank you.

Senator Pryor. I thank you also for bringing those results before the Committee.

Mr. Thrower, do you have a statement, or are you just accompanying Mr. Sombrotto?

Mr. Thrower. I have a statement for you, Mr. Chairman.

Senator Pryor. All right.

TESTIMONY OF STEVE THROWER, NATIONAL ASSOCIATION OF LETTER CARRIERS

Mr. Thrower. Mr. Chairman, my name is Steve Thrower. I have been a member of the National Association of Letter Carriers for 21 years and Oklahoma State President since 1975 and State Legislative Chairman since 1981. I wish to thank you for asking me to testify.

I was elected the mayor of the city of Norman, Oklahoma, a city of 75,000, in 1983 and served in that capacity until 1986. I was elected from a field of 5 candidates, winning a runoff by 41 votes. It is a non-partisan election.

Before I ran, I read the Employee Labor Relations manual, consulted the Hatch Act, and informed my supervisors of the decision to run. While running, I continued to deliver mail, including my opponent's mail. Running for mayor did not change my obligations as a letter carrier to deliver mail. I continued to provide the customers on my route the same first class service I gave in the past and continue to do so today.

Letter carriers, while off the clock, helped me in the campaign. There were no complaints about them or me during the race or while I was mayor. Actually, the fact that I was a letter carrier helped me. I was not in a position where I could be threatened. I was not a banker who could be pressured. No one could threaten my job because it is a civil service position, and I have a good strong union to protect my rights. People felt, if you cannot trust your letter carrier, who can you trust? And they are right.

There was one potential conflict of interest concerning a zoning question for a Postal Service building. I acted like any other responsible official facing a possible conflict of interest: I excused myself from that issue.

Had this been a partisan office, I would not have behaved any differently.

Mr. Chairman, I ran for mayor because I am interested in my community. I want my children to attend good schools, have a clean environment, drug-free streets and be proud citizens of their community. I see myself as a people's advocate. I do not see any conflict between my job as a letter carrier and my community service. It is part of being an American.

I urge you to support reform of the Hatch Act so that all letter carriers and all Federal employees can serve their community and their Nation as I did.

Thank you.

Senator PRYOR. Thank you very much, Mr. Thrower.

Our next witness is Dallas Fields, National Rural Letter Carriers Association.

TESTIMONY OF DALLAS N. FIELDS, PRESIDENT, NATIONAL RURAL LETTER CARRIERS' ASSOCIATION [1]

Mr. FIELDS. Mr. Chairman, members of the Committee, my name is Dallas Fields, and I am the President of the 73,000-member National Rural Letter Carriers' Association. I appreciate this opportunity to appear before the Subcommittee to express our strong feelings on this legislation to amend the Hatch Act.

We feel that the House-passed bill, H.R. 3400, is a well-balanced approach to the problems of 1988. Under H.R. 3400, employees could participate in a full range of political activities as long as they are off duty and away from the Federal buildings or the work site. We currently have some of our members who are serving their communities as mayors, city council members, and school board members. Many who wish they could be of service to their communities at the local level are, in fact, prohibited from doing so by the current Hatch Act.

We think the protections against coercion in this bill are sufficient to protect the citizens who pay the salary of rural letter carriers, but we would hope for a little more freedom. Let us look at some examples, Mr. Chairman, in your own State, the great State of Arkansas.

In the town of Greenbrier, population 1,500, if our State Secretary desired to run for City Council or mayor, she would be prohibited from doing so because you have a partisan party ballot, and, therefore, she could not run. On the other hand, in Branch, Arkansas, a rural carrier could run and serve as mayor or on the City Council because they have non-partisan elections. In Charleston, Arkansas, the home of Senator Dale Bumpers, they have a population of about 1,700. They have partisan elections; and, therefore, were Senator Bumpers a rural letter carrier, he would be prohibited from seeking even local office.

We have some other unusual examples. In Jonesboro, a population of about 31,000, we have a rural letter carrier who, for many years, was desirous of serving on the City Council. He was, however, prohibited from running until his retirement, and since then he has served his community with distinction for the last 10 years as a member of the City Council.

In Wynne, Arkansas, a population of approximately 8,000, Ira Lee Allen, a carrier, was appointed by the mayor to the City Council. Since the Hatch Act does not mention anything about appointment, he served there with distinction for 3 years. However, when it came to seek a full term as a City Council member, the Hatch Act prohibited him from running for election. So he had to simply serve out his term and give up his service to his community and is no longer a city councilman.

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[1] See p. 262 for Mr. Fields' prepared statement.

Our Arkansas State President, James A. McGuire, Jr., lives in Malvern, Arkansas, a population of 15,000. His wife happens to be on the Democratic Committee of the county. Jim has for many years wanted to run for the City Council in Malvern, but he is prohibited from doing so by the Hatch Act because they have partisan elections.

I hope that these examples give you some idea of the hodgepodge that our people face in terms of the current Hatch Act. We think that this bill or some bill like it, perhaps addressing some of the concerns that some Senators have, would be a good way to begin to change things for the better by amending the Hatch Act in 1988.

Thank you for this opportunity to present our views.

Senator PRYOR. Thank you very much, Mr. Fields.

Let me just ask one question. I was not sure on the record. Mr. Sombrotto, you did bring for the Committee what looked like several thousand questionnaires from the people in your organization. Was the question, Do you want the Hatch Act repealed or reformed? What was the actual question?

Mr. SOMBROTTO. The actual question: Do you support reforming the Hatch Act?

Senator PRYOR. Reforming.

Mr. SOMBROTTO. That is correct.

Senator PRYOR. Rather than repealing.

Mr. SOMBROTTO. Reforming.

Senator PRYOR. I have heard several people on the pro and con side of this issue talk about this issue as the repeal of the Hatch Act. I thought that it was the reform of the Hatch Act. There are some changes.

Mr. SOMBROTTO. That is correct. Yes, we think there are some things in the Hatch Act that are desirable.

Senator PRYOR. Okay. Fine.

Now I believe we will go to Mr. Moe Biller.

TESTIMONY OF MOE BILLER, AMERICAN POSTAL WORKERS UNION [1]

Mr. BILLER. Mr. Chairman, my name is Moe Biller, President of the American Postal Workers Union, AFL-CIO, with some 350,000 members throughout the country. Our members are situated in every city, village, borough, and town in the United States.

The American Postal Workers Union has long been a proponent for changes and reforms in the Hatch Act. The officers and members of APWU believe that in light of this administration's misinterpretation of the Hatch Act and the heavy-handed tactics used by the Special Counsel of the Merit Systems Protection Board, that this is an excellent time to re-examine the legislative intent of the Hatch Act. We believe H.R. 3400, as passed in the House of Representatives on November 17, 1987, by a vote of 305 to 112 is a workable alternative to the current regulations which have become even more confusing and vague over the years. Mr. Chairman, we thank you for this opportunity to testify and look forward to working with you and your staff in efforts to establish a fair and sensible solution to the problems brought on by the dated and confusing legislation known as the Hatch Act.

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[1] See p. 267 for Mr. Biller's prepared statement.

As you know, Mr. Chairman, NALC President Vincent Sombrotto, AFGE President Ken Blaylock, and I have been unfairly charged by the Special Counsel of the Merit Systems Protection Board with violations of the Hatch Act. The Special Counsel's Office claims that we had engaged in campaign activity during the 1984 presidential campaign by writing articles in our respective internal union publications supporting Walter Mondale.

The Hatch Act was intended, as you know, to limit active political management, or campaigning, not the speech of postal and Federal employees. A principal purpose of the Act was to prevent employers from harassing or intimidating employees for political purposes. Its key provisions prohibit the use of official authority or influence to coerce the political action of a person or body. We 3 union officials who have been charged are not guilty of any of these violations. As a matter of fact, the present administration has subverted the intent of the Hatch Act, which was to protect employees from coercion.

Furthermore, on pure First Amendment grounds, a postal worker is permitted to voice his or her views that a given candidate's election would be in the best interest of all postal employees. Finally, as union officers, we have the right to speak for the organizations we represent.

We sincerely belief the effort was not directed against us because our leaves of absence make it look ludicrous, but rather to have a chilling effect on the people that we represent.

The House-passed bill, H.R. 3400, is an excellent attempt to correct the ills of the current legislation. In addition to providing postal and Federal employees greater opportunity to participate in the political process of this country, H.R. 3400 prohibits every kind of conduct which conceivably threatens the merit system.

The members of the American Postal Workers Union believe that after 49 years of sometimes arbitrary prohibitions against political action and involvement by postal and Federal workers in this country that such employees have proven themselves mature and intelligent enough to have this unconscionable and certainly unnecessary act removed from the books and from the backs of the affected employees. Postal workers are ready, willing, and able to participate fully in all aspects of political life.

The present legislation, as you well know, makes it very clear that it cannot be done on company time, and that as a matter of fact, people have a right also or would have a right to take leaves of absence and do whatever they could, but not on company time.

Every one of the arguments presented could be refuted very easily. As a matter of fact, I do believe sincerely that the people who were here this morning, kind of like Rip Van Winkle, have been asleep and forget that there is both a Civil Service Reform Act and a Postal Reform Act also. The labor unions today have been able to protect their membership very, very well from coercion, and to be able to help them participate not only in the political process of our Nation, but we have grievance procedures, all types of protection, in which we are obligated under the law to protect our membership. And that is very important.

I think it is wonderful, and I commend Secretary Shultz for traveling to the Soviet Union and sticking up for human rights. And it would be nice if this administration could turn to postal and Federal workers and help us also in gaining the political rights that we believe we are entitled to and we believe we can protect.

I see the amber light on, so I am going to let you go at that. And if you know the story about the red and amber lights, we will not tell it to you. But if you are interested, it will take 30 seconds.

Senator PRYOR. I think you had better put it in the record. I think you better tell us now.

Mr. BILLER. Okay. This was an international symposium of world-renowned scientists, and they knew that everyone, in expanding on their theories, would be quite lengthy. So they decided to limit discussion or presentations to no more than 3 minutes; at the end of 2 minutes an amber light would go on warning them that they only had 1 minute. After that minute, the red light would go on. It did not matter of your importance; you would have to go off.

It worked very well, as your system is working today, except until one of the most famous and renowned scientists of the world got on. He saw the amber light, he saw the red light, but it did not bother him. People were too polite to walk out until it became impossible. They began to leave one at a time, three at a time, five, six, until there was only one person left in the audience. The scientist turned to that person and says, "I appreciate your being here, and you are obviously the only one who understands my theoretical concepts. I am going to explain it to you a little more." He says, "Sir, I do not want to be rude at all, but I must tell you the only reason I am here is that I happen to be the next speaker."

So thank you very much.

Senator PRYOR. Thank you. Thanks to all of you. This has been a fascinating morning. We started, I believe, at 9:30. It is now 1:00 o'clock. We are going to continue discussion of this issue tomorrow morning in this same room at 10 a.m.

Some of you have sat through this whole hearing. We appreciate that. There is a lot to learn. All of us have a lot to learn about these issues. For me, this has been a very educational morning.

We thank you. The Committee will stand in recess until tomorrow morning at 10. Thank you.

[Whereupon, at 1 p.m., the Committee recessed, to reconvene Wednesday, February 24, 1988.]

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1987

WEDNESDAY, FEBRUARY 24, 1988

U.S. Senate,
Committee on Governmental Affairs,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn, Levin, Sasser, Pryor, and Roth.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman Glenn. The hearing will be in order.

This week the Governmental Affairs Committee has begun hearings on H.R. 3400, the Federal Employees Political Activities Act of 1987. H.R. 3400 amends the Hatch Act, a 1939 statute which prohibits most Federal and postal employees from actively participating in partisan political activity.

H.R. 3400 would restore the right to participate voluntarily as private citizens in the political processes of the country to Federal civilian and postal service employees. The House passed H.R. 3400 by a wide margin of votes with bipartisan support. There are some 3,000 different regulatory rulings that Federal employees have to cope with on what they can or cannot do regarding politics.

This set of rulings is sometimes complicated, sometimes restrictive, and often inconsistent. I used as a couple of examples yesterday—ones that I think most of you are probably familiar with now. According to current law a Federal or postal worker can wear a campaign button on the job, but it is against the law for that same employee to host a meet-the-candidate coffee at home after hours.

A Federal worker can put up a larger political advertisement on the family car—it can be no larger than 15 inches by 30 inches—however, that same employee, if he wants to put up a yard sign out in front of his house, it can be no larger than 14 by 22 inches. Now, you get into a lot of these comparisons that have developed through the years and it gets a little bit ludicrous. So there obviously needs to be some changes made.

One of the things that we need to remember also is that when the Hatch Act was enacted into law about 50 years ago, civil service jobs were patronage jobs. But now we have a different kind of system, a merit system, a professional civil service. Back in those days I think only about a third of the workers of the country were protected from political coercion, and now it is close to 80 percent.

I think about 78 percent is the actual figure for people who are protected.

So what we have done is we have seen a big shift from the people that were "at risk," if you want to put it that way, of political coercion. That group has gotten much smaller and now what we are considering with H.R. 3400 is, do we restore the full normal political rights to people because the group at risk has become much smaller?

Some of the issues we hope to be able to examine are whether the Federal Government's merit system would be compromised by politically active workers and whether the rights of individual Federal workers to be free from political coercion could be adequately protected. They are important issues. They are of real concern to many people and it is my hope and expectation they will be very thoroughly and fairly addressed.

We had a long list of witnesses yesterday and we have a not quite so long list today, but a no less important list. And we are very glad to have Mr. Gerald McEntee of the American Federation of State, County, and Municipal Employees, and Mr. Ken Blaylock of the American Federation of Government Employees with us this morning to lead off.

Before we start, I would add that Senator Stevens was planning to be here this morning. He has been very much concerned about this area, been very active in it, very active in all civil service matters for many years, of course, on this Committee.

But he was called down to the White House this morning for a bipartisan meeting regarding Central America. He wanted to make sure that we noted this because he was planning to be here this morning.

Senator Bingaman, who could not attend this morning, has a statement for the record and we will insert it at this time.

[The statement referred to follows.]

OPENING STATEMENT OF SENATOR BINGAMAN

Mr. Chairman, I am most pleased that the committee is holding hearings on H.R. 3400, the Federal Employees' Political Activities Act of 1987. The important issue of encouraging participation in the democratic process by all citizens, including federal workers, deserves our serious consideration and I commend the Chairman and the Chairman of the Civil Service Subcommittee, Senator Pryor, for holding these hearings this early in the year.

The existing provisions regulating the voluntary political activities of federal employees, collectively known as the Hatch Act, are confusing and vague. As a result, many federal workers do not know which political activities are permissible under existing law and which are not currently allowed. These provisions of law were created nearly 50 years ago in response to political abuses at the time of the New Deal. Much has transpired in our society and the way we conduct political activities since that time. As a result, these regulations need to be reviewed anew to determine whether changes need to be made to better reflect today's political realities.

Although the political environment has changed substantially since the passage of the Hatch Act in 1939 and, as a result, some changes may need to be made, I feel very strongly that any discussion of possible change begin with the overwhelming need to protect the public and the federal workforce from political coercion and corruption, which, of course, still exists today. I have serious concerns about the possible political coercion and intimidation of the federal workforce that could arise if strong safeguards are not agreed to. In addition, we must ensure that the American public is protected and public confidence in the federal government and its employees is not abridged in any way. I am hopeful that, as a result of these hearings, compromise legislation can be developed that will strike the proper balance between providing federal workers the right to voluntarily participate in the political process while at the same time protecting the federal workforce and the American public from political coercion and corruption.

In closing, I want to once again thank the Chairman for holding these timely hearings and I look forward to the testimony of the witnesses this morning.

Chairman GLENN. Senator Pryor has headed up our efforts in the subcommittee on civil service matters and sometimes we have issues that come before us that we feel are particularly important and we hold these hearings then at full committee level in spite of the fact that the Subcommittee would normally have jurisdiction over a particular item.

Senator Pryor would normally handle all of these matters on his Subcommittee, but because of the importance of this we wanted to have the hearings at the full Committee level. While I will be here for part of the time, Senator Pryor will chair most of the time, and he is certainly an expert in this field.

So, David, do you have any comments before we go ahead?

Senator PRYOR. No, Mr. Chairman but I do have a short opening statement for the record. I do apologize to you for being late.

[The statement referred to follows:]

OPENING STATEMENT OF SENATOR PRYOR

We continue our hearings today on H.R. 3400, the Federal Employees' Political Activities Act of 1987.

Yesterday, we heard from OPM and other administration witnesses, representatives of postal employee groups and several private sector groups, including Common Cause and the ACLU. The members of the Committee who participated yesterday had a number of frank and informative exchanges with our witnesses. Many of our suspicions about the Hatch Act and its administration were confirmed, and several gray or problem areas in the House-passed bill were discussed. I look forward to another productive session.

Before we get started today, I would like to comment on one issue that came up several times during yesterday's hearing—the views of the Senior Executive Association relative to reform of the Hatch Act.

According to OPM Director Horner, S.E.A. polled its members and 74 percent of those *polled* opposed reforms. According to a letter I received from S.E.A., only 21 percent of those polled actually responded. It was three-quarters of those who responded, NOT those polled, who oppose the House-passed bill. This 21 percent response rate is, by the way, quite a bit lower than the 50 percent response rate S.E.A. got on its drug testing questionnaire.

Finally, from the summary of comments by S.E.A. members, it is quite clear that opposition is based as much in fear of increased abuse—let me repeat increased abuse—as it is in concern over the merit system. The S.E.A. survey and related comments will be included in the hearing record.

Senator PRYOR. I thought that we heard some very good testimony yesterday. The hearing went from 9:30 a.m. until almost 1:15 yesterday afternoon. We heard the pros and cons of the Hatch Act. We heard a lot of its history, a lot of the reasons why it is there, as well as some of the changes that H.R. 3400 would bring about if passed and signed into law.

I thought it was a very constructive airing of the issues, and I am looking forward to these panels this morning.

Chairman GLENN. Fine. Because we have a great number of witnesses we had asked our witnesses yesterday—since we had 18 or 20 witnesses yesterday and 10 today—we had said that we would include in the record whatever statement they wanted and however long. We asked that they try to keep their verbal statements, though, to 5 minutes or so, and that is the reason the lights are on there, to give you a warning on this.

First on the list this morning is Mr. Gerald McEntee, American Federation of State, County and Municipal Employees. Gerry, go ahead.

TESTIMONY OF GERALD McENTEE, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Mr. McEntee. Good morning, Senators.

I am here to testify on behalf of H.R. 3400, the bill to reform the Hatch Act. We would like to submit my prepared testimony for the record [1] and make some oral comments in the time available.

Chairman Glenn. It will be included in the record in its entirety.

Mr. McEntee. Our union represents 1.5 million State and local employees in 48 States and the District of Columbia. Our large and diverse membership has given us a great deal of experience in protecting the rights and representing the interest of public employees in both jurisdictions that strictly restrict the political activities of their employees and jurisdictions which have few, if any, such restrictions.

You might say we have experienced both the before and the after of Hatch Act reform. As a result, we have a unique perspective on the effects of lifting political restrictions on public employees. Our experience in the different states leads us to strongly support the reforms contained in H.R. 3400. Our members and, indeed, the entire Nation are best served by permitting Government employees to participate fully in the political process.

We come to this conclusion even though one of the major roles of our union is to protect our members from political coercion and to help create an atmosphere in which public employees can perform their jobs in a neutral, non-political and efficient manner. Restricting the political rights of public employees does not necessarily prevent political coercion or establish the neutral administration of Government.

Too often political restrictions are selectively enforced and arbitrarily used to harass public employees. Let me just cite two examples that have come to our attention from our members in the State of Ohio, a state which has one of the most restrictive statutes regulating political activities.

In one recent case we had to go to arbitration to prevent the firing of one of our members who was a dump truck operator for the Ohio Department of Transportation and was fired because he placed a Robertson 1988 sticker on his hard hat and left some anti-abortion material in the break area of the Department's garage in the city of Lima.

In another case, the Republican Administrator of the City of Hamilton threatened to discipline the employees of that town who put, "Celeste for Governor," bumper stickers on their cars, even though placing political bumper stickers is expressly permitted by State regulation. The fact of the matter is that no governmental purpose is endangered by an employee wearing a political button or displaying a bumper sticker.

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[1] See p. 282.

Our view that restrictions on the political activity of public employees are not necessary to prevent political coercion is also borne out by the record of the Office of Special Counsel. Since 1978 the Special Counsel has been charged with enforcing the Hatch Act prohibitions against any state or local officer of an agency which receives Federal funds from politically coercing someone or using their official position to influence an election, or running for partisan office.

We contacted that office and were told that in the last 9 years there have been only ten investigations of violations of the prohibitions against coercion or the use of official positions for political purpose, and only one successful prosecution of these violations.

It is interesting to point out the single successful prosecution came in the State of Ohio, which has a little Hatch Act which severely restricts the political activities of its state and local employees. No prosecutions have been initiated in those states which do not restrict the political activities of public employees.

All of us want to prevent the political coercion of Government employees and to ensure the neutral and efficient operation of Government. Our union's experience in states with little Hatch Acts and the record of the Special Counsel are clear evidence that broad restrictions on the First Amendment rights of public employees are not necessary to protect them from coercion and to ensure fairness in Government.

These important goals can be achieved through a merit civil service system and very minor but clear restrictions on political activity, such as those contained in H.R. 3400. We therefore urge this Committee to pass H.R. 3400 or similar legislation so that Federal employees may enjoy their First Amendment rights and participate as full citizens in our democratic process and in molding the future course of our Nation.

I greatly appreciate this opportunity, Senators, to appear before you this morning, and if there are any questions, at the appropriate time I will be happy to answer them.

Thank you.

Chairman GLENN. Thank you very much. We appreciate that, Mr. McEntee.

Next we have Mr. Ken Blaylock, American Federation of Government employees.

TESTIMONY OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. BLAYLOCK. Thank you very much, Mr. Chairman. We do appreciate the opportunity to express our views on H.R. 3400 and the existing Hatch Act.

Both Gerry and I not only give our own testimony, but we appear here on behalf of the public employee department of the AFL-CIO. I would also request that our full statements be entered into the record [1] and I will summarize my statement.

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[1] See p. 360.

Chairman **Glenn**. It will be included in its entirety, without objection.

Mr. **Blaylock**. We are obviously here to urge, very seriously, the passage of a Senate bill crafted along the lines of H.R. 3400. We recognize that there will be negotiations, and that is as it should be. In fact, I would like very much to associate my remarks with the Members of the House who testified yesterday, especially Congressman Taylor from Missouri. There was a bipartisan effort, all parties worked very hard in that Committee to finally craft a bill that both freed Federal workers to participate in the political process, protected them against coercion, and at the same time protected the public interest. I think we have these amendments, and that is what H.R. 3440 is, is amendments to the existing law, in better shape than we have ever had, to accomplish those goals, so we urge very strongly the same exercise. take place here. We think the time has come to free Federal workers from the political restrictions that they have had for so long.

One of the major reasons we support this piece of legislation—it is very clear and very concise, and I notice that other witnesses testifying on behalf of the legislation made that point. Mr. Chairman, in your opening remarks you pointed out the confusion around the interpretation of the law today. H.R. 3400 clears that up. People know what they can do and what they cannot do.

On-duty, in uniform, in an official capacity, political activity is prohibited. Off-duty, out of uniform, out of official capacity, they can participate, but even then under section 7324 of the bill, there are strong prohibitions even off-duty, against employees of the government using their official capacity with people they may deal with, whether it is in a regulatory matter or otherwise, contracts, et cetera. There are still protections there to protect the public interest, and I would just like to point that out, because I understand that issue was raised two or three times at the hearing yesterday.

The Hatch Act is outdated. Our Government workforce today operates in a much changed environment than it did in 1939, when the Hatch Act was passed. I think the passage of the Hatch Act in 1939, although there was very good reason for passing the law, again it was a good example of congressional overkill, because if you really read that history, you will see that it was political appointees, you will see that it was managers who really were violating the law and perpetuating the political coercion against not only workers in those programs in those years but also against recipients of those programs in the communities in those years, demanding political contributions, political support, changing party affiliation, et cetera, et cetera.

But in the way we normally do business here, we throw the baby out with the bath water and we restricted everybody's rights. We use the term "Federal employee" and that covered everybody, whether they were managers or whether they were truckdrivers or whether they were laborers or whatever.

The public and the employees are much more akin and offended by attempts to politicize the workforce today. The press as an institution is very vigilant in ferreting out malfeasance within Government today. Congressional committees such as this one, often with assistance of the GAO, exercise continuous oversight to guard against agency politicalization.

Unlike 1939, unions in the Federal sector now represent the vast majority of employees and we have statutorily defined powers and responsibilities to protect and defend the employees from abuse and coercion, and you have the Merit System Protection Board which exists to defend employees in personnel actions which contravene the merit principle. It is a totally changed environment and the Hatch Act we think no longer protects employees, in fact it silences them.

One thing that H.R. 3400 does, it totally reverses the whole dynamics of the current situation. Today, a manager or a supervisor, a political employee can say to an employee, "I want you to support candidate so-and-so," and the person says that is illegal for me to do it. H.R. 3400 now puts that employee in the position of saying to that manager, "It is illegal for you to ask me to do that." We think that is a much better environment.

Just one closing comment in regards to what impact will this have on the workers. Mr. Chairman, this is not going to bring about a political revolution. Federal workers are like anybody else in this community. You will find two or three activists on one block that get very involved. You will have others that vote and do their constitutional duty, and you have got others that do not get involved and could care less, and that is going to have the same impact on Federal workers, but we think it is time to lift those shackles and let those employees who do want to get involved in the political system of our country, it is time to give them that opportunity and we urge your support of this measure very strongly.

Thank you very much.

Chairman **Glenn**. Thank you very much.

You have looked at this whole thing very carefully, both of you, and let us say we take H.R. 3400 and we pass it as it is or make some modifications or strengthen it or whatever. In other words, the Hatch Act as we have known it would be out. Are we going to then need to change any other laws as you see it to strengthen protections so that people are not dealt with unfairly? Are the current laws adequate, the civil service laws? Do we need to pass anything that will protect those one-quarter of the Federal workers who are still going to be outside the protection of the merit system basically?

In other words, if we pass this as it is, should we at the same time change—is it going to be necessary to change any other laws to make sure that we do not permit some abuses to creep back in? Ken?

Mr. **Blaylock**. When you say people outside the current protection, what groups are you talking about?

Chairman **Glenn**. I was talking about where we have moved, under civil service, under the merit system, where we only had back in those days when the Hatch Act was passed, 30-some percent of the people were under that, now we have almost 80 percent of the people covered. That means we are still going to have about 20 percent or 22 percent that still would be outside some of those protections. Do we need to make other legislative changes that will protect them if we go with H.R. 3400?

Mr. **Blaylock**. Well, you have got excepted employees now and it is questionable whether they are or whether they are not covered in reality but, you know, extension of the Hatch Act has been interpreted, the current law has been interpreted to apply to State and local workers where Federal funds are involved, there have been questions raised about contract workers, whether they are covered or whether they are not covered where those Federal funds are involved.

To be very candid with you, Senator, those in the excepted service and those who are not now covered by the civil service laws, I have heard of no problem in that area. Our union has not been involved in any problem in that area, so I really could not answer your question, whether we ought to change the Civil Service Act to cover or make sure this law extends to them.

Chairman **Glenn**. I guess my question has two parts: Do we need to do any strengthening of the Civil Service Act if we change this; and, number two, then, for people who would not be under the specific protections of the Civil Service Act, do we need legislation to somehow give some protections to those other people, the 20 percent that would not have adequate protection?

Mr. **Blaylock**. Well, I guess my answer there would be—and I am not sure about that, I guess our lawyers could tell us, but in the definition of this Act I am not sure whether it only applies to those classes covered by the Civil Service Act or not. It seems like that would be the area we would have to look at.

Mr. **McEntee**. Senator, we have had this happen in States as well, where they have put in the Hatch Act or removed the Hatch Act. In many cases, through the process of collective bargaining—and Kenny represents over 700,000 Federal employees and Government workers—we have found that using the process of collective bargaining we can also provide protections for people that may be endangered in any way by the politicians or pushed and shoved around in terms of contributions or working on elections days, and we have just hundreds and hundreds of contracts that prohibit that kind of action for people that are not covered by civil service.

So, one of the avenues that you could use to address this kind of situation is through the process of collective bargaining with AFGE and the government working out language that would prevent this kind of thing. And I would think and hope that the Federal Government would be opposed to that kind of action and activity, so it would not be a big deal in terms of negotiating that kind of language.

Chairman **Glenn**. What do you think is likely to happen? Are we going to see a big wave of political activity here if we change this, or do you think it is just sort of a restoration of rights and that it would be sort of a gradual move in that direction? Do you hear much expression from your members about particularly wanting to run for political office at the local level or whatever?

Mr. **Blaylock**. Well, we raised this issue and, of course, in our last four conventions this has been one of our four legislative mandates that comes from the delegates in our conventions, is political freedom. My own feeling is that it will be one of those things, like I said earlier, you will have some people who are going to get involved immediately. You will have others that—I think you will see it gradually growing if people realize they have the freedom.

As far as running for office, I have facetiously said many times that Federal workers have been in the system so long, I do not know any of them that want one of these damned offices you have up here, so I am not sure whether you would have that many running or not. And after you all sat here this morning and explain the gyrations that go on up here 24 hours a day, Senator, I am not sure about that.

Chairman GLENN. Do you have any—do either of you within your unions have any reporting mechanisms or any way of monitoring what is going on? Do you do polling? In other words, can you be a conduit for information as to what would be happening if this is changed?

Mr. BLAYLOCK. Oh, yes.

Mr. MCENTEE. I think both unions could provide you with a line of communications. We do polls of the membership of our union probably once a year, but also through the grievance procedure, through the stewards procedure, and local union officers, both unions would be directly in touch with the activities in the field.

I would like to follow up on what Kenny talked about and the question you asked, whether or not there will be a whole slew of people becoming politically active. I do not think you will see that. You will see some of it, but I do not think you will see a whole slew of people.

Both of our memberships are a picture of the people that live in the United States, and some of them, of course, will be active and some of them will not be active and some will be very active. We have situations in local and State governments where people want to run for office. They want to run for a local school board or they want to run for a city council position, maybe in some borough or township they want to be a mayor, but they are now prohibited from doing those kinds of things.

I do not think you will see a lot of people, but you will see the people who want to be active in the political process of the United States, whether that is running for office or being a political committee person or putting a bumper sticker on their car. You will see some do it and you will see some that just will not bother.

We can give you detailed data. We have some States where some people who work in certain classifications and in certain departments in that State are not allowed to be politically active because they are Hatched. We have the same classification of worker, it might be an equipment operator, it might be a computer operator, in another department and they are not Hatched by civil service and they are allowed to be politically active. And we do not see in terms of their work, in terms of their efficient operation of the job or in the way they are supervised that there is any difference at all, whether you are Hatched or not Hatched.

Chairman GLENN. Just one further question and then I will turn the hearing over to Senator Pryor. Do you advocate any changes in H.R. 3400?

Mr. BLAYLOCK. Not at this point, Senator. Like I said, an awful lot of work went into it by the Committee over on the House side, on both sides of the aisle, and we were involved with the Committee over there and in fact they made sure all of the different unions and employee organizations, they gave the administration an opportunity to help craft that and the administration refused but they tried to bring all interested parties into the negotiations and development of that. I think they have got it in excellent shape, so I would not advocate any change at this point.

Chairman Glenn. Mr. McEntee?

Mr. McEntee. We would agree with that wholeheartedly in terms of Kenny's comments. Before you leave, Senator, I would like to make two points, if I may.

Chairman Glenn. Just one other thing when you address that: Are there any things in it that you think should be taken out?

Mr. Blaylock. Of H.R. 3400?

Chairman Glenn. Yes.

Mr. Blaylock. No, sir.

Chairman Glenn. OK.

Mr. McEntee. We agree with that. We would also like for the record, as Kenny stated, to show that we appear here not just for our individual unions but on behalf of the public employee department of the AFL-CIO, all of the unions that have public employees and public sector workers. We have for the Senators' attention, a summary by that department of all of [illegible] Hatch Acts that now exist in State and local government jurisdictions. We ask that this summary be placed in the record.[1]

Just one other comment, if I may: I was listening to the morning news this morning on CBS, and I am sure it was covered on other stations, but they reported a brand new crackdown on South African antiapartheid groups, such as the unions in South Africa. They issued a new edict in South Africa which starts immediately which tells all of the labor unions that they are henceforth from this day ordered to confine themselves to union business and that they and all of their people must stay out of politics.

That timely comments seems relevant to this hearing and the bill that is now in front of this Committee and I feel sure that we certainly do not want to follow the example of the government of South Africa.

Chairman Glenn. Thank you, and thank you for the other material on the Hatch Act status throughout the States. Thank you.

Senator Pryor?

Senator Pryor. Thank you, Mr. Chairman.

I think Chairman Glenn has raised a very good line of questioning this morning about other pieces of legislation that now exist on the statute books, merit system, civil service, et cetera, that might have to be changed as a result of the passage of H.R. 3400, if it is passed.

Senator Glenn may not have been in the Committee yesterday when I presented for the record about 12 or 15 sections of title 18 of the U.S. Code relative to political coercion. I do not know if any of those would have to be changed. I think the line of questioning is very justified and I think it is something our staff ought to look at and we ought to answer that question.

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[1] See p. 288.

Chairman **Glenn**. I was not here yesterday when you went into that and I am glad you mentioned it.

Senator **Pryor**. Thank you, Mr. Chairman. I only have about one or two questions. Mr. McEntee, I think that roughly in the time period of 1974 we did change the Hatch Act. The Justice Department has characterized the Hatch Act as a dike holding back a flood of abusive criminal activity.

Now, we saw a change in 1974 and I think that allowed participation on the State and local level, is that correct?

Mr. **McEntee**. Of certain State employees, where they received funding from the Federal Government, correct.

Senator **Pryor**. Pursuant to the change made in 1974, has there. been any rash of evidence of any abuse that has taken place at either the State or local level?

Mr. **McEntee**. No, we have a membership of 1,150,000, and many of our members are covered explicitly by those changes and we have not seen any rash of that at all.

I would also refer you to our testimony, our written testimony when we talk about the Office of the Special Counsel to the Federal Government which is supposed to police that, and I think we have only had 10 cases since 1974. And when you look at the record of the Special Counsel and the record of the cases, it shows in a very concrete fashion, as well as our own experience in the field, that indeed we had no rash of illegal, unlawful activities on behalf of politicians.

Mr. **Blaylock**. The thing about H.R. 3400, Mr. Chairman, is that it keeps all of those prohibitions against coercion and against abuse of office, both internal and external, with the Federal Government and organizations, companies people interface with, it keeps all of those other prohibitions in place, in fact strengthens them, and that is what we are really trying to do, make sure we do not have coercion and misuse.

Senator **Pryor**. I believe under the present Hatch Act, the question about whether or not a Federal employee may wear, let us say, a campaign button for a political party or a candidate, I think that is a gray area. This needs to be clarified, and I understand H.R. 3400 clarifies it to the extent that it prohibits the campaign button from being worn on the job. Am I correct in that interpretation?

Mr. **Blaylock**. Well, it clarifies all of the gray areas, and there are a lot of gray areas. This whole issue of the Federal employee, when they get off the job and go home at night, can they hold a political party at their house? The answer is no. Well, can that employee's wife, who belongs to a political party in the community, can she hold one in his house? Technically, the answer is no.

So, that is the whole problem with the thing, Senator, and that is what H.R. 3400 does, it says, you know, at the work site you cannot do anything political, in your official capacity you can have no political activity, in uniform. Off the job, when you go home at night, if you want to get on a telephone bank, you can do it. If you want to—you know, the thing right now, they say you can attend a caucus or a political rally but you cannot participate. Well, what in the hell is the use to go if you cannot participate? You know, that is not going to do you a lot of good or anybody else.

It is just so confusing right now that people do not do anything, and that is the whole thing. It has been turned on its head, it is used now to intimidate the workers and keep them from participating, when really they should and could if they want to.

Senator PRYOR. You can go to a fish fry, but you cannot eat the fish.

Mr. BLAYLOCK. That is right. That is right.

Senator PRYOR [presiding]. We want to thank you gentlemen very much for your statements this morning.

Our next panel consists of Mr. Jim Peirce, National Federation of Federal Employees; Mr. Robert Tobias, National Treasury Employees Union; Mr. Kenneth L. Lyons, National Association of Government Employees; and Ms. Julie Tagen, Federal Managers Association. We welcome this panel to the hearing this morning.

We will call on Mr. Jim Peirce first. We will be observing the 5-minute rule, and you will see the lights before you there.

Mr. Peirce you may proceed.

TESTIMONY OF JIM PEIRCE, NATIONAL FEDERATION OF FEDERAL EMPLOYEES [1]

Mr. PEIRCE. Thank you, Mr. Chairman. I will make it brief.

On behalf of the National Federation of Federal Employees, I appreciate the opportunity to appear today before the Committee to present our views on the Hatch Act and the need for its reform. Instead of offering employees their only protection against political coercion, the Hatch Act of 1939 has left a legacy of misapplication and penalties its framers never intended. The Hatch Act has been interpreted in such a manner that Federal employees are precluded from almost all political activities. The law forbids employees from campaigning for candidates in partisan elections, making campaign speeches, distributing campaign material in partisan elections, and collecting contributions for any partisan candidate. Interpretations have become so restrictive that the very employees the law was intended to protect have been penalized instead.

For example, during the 1984 election campaign, the President of NFFE Local 1765 at the Veterans' Administration Hospital in Leavenworth, Kansas, was threatened with discipline by management for signing her name to postcards which endorsed a political candidate. The NFFE member was unaware that she was under any restrictions because she had never been so informed by management.

After a lengthy investigation by the Office of Special Counsel, the complaint against the employee was dismissed. The OSC said the agency had been deficient in providing guidance to the workers on the Hatch Act. In addition, several management officials were found to be participating in similar political activity without being similarly accused. NFFE representatives suspect that the agency could have been using the incident as an excuse for disciplining a worker for union activity.

Another case involves an NFFE member from Atlanta, Georgia who belongs to a folk dancing group. She called NFFE Headquarters to find out if she could legally appear as part of the dance troupe when it performed for delegates to the Democratic National Convention. She noted that another union member was planning to tend bar at one of the convention hotels and he was also concerned about any possible violation.

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[1] See p. 385 for Mr. Peirce prepared statement.

NFFE staff consulted with the OSC who determined that the two Federal employees would have to be able to prove that their activities were frequent or they could be found in violation of the Hatch Act. The OSC specifically listed as acceptable evidence programs from previous folk dancing exhibitions and pay stubs from tending bar at other functions. I find it hard to believe that either of these two individuals would be swaying any of the Democratic delegates by pouring a drink or performing a folk dance.

The requirement of the Hatch Act has long been a necessity for Federal workers and now it is close to coming a reality. On November 17, 1987, the House of Representatives voted 305 to 112 in favor of H.R. 3400. The legislation reduces restrictions on political activity while protecting employees from coercion. Their political views or level of activity differ from those of their supervisors.

The House has sent a bipartisan message that the time for Hatch Act reform is now, and NFFE would urge that the Senate make an identical statement supporting First Amendment rights for Federal workers by passing H.R. 3400. This legislation is simple and effective: Federal workers would be able to behave as other citizens do once they are off the job, off the clock, not wearing a Federal uniform or driving a Federal vehicle.

In closing, Mr. Chairman, let me just say that the First Amendment to the Constitution guarantees to all citizens of the United States the right to political participation. Since 1939, however, Federal workers' rights in this area have been severely restricted. Any reform of the Hatch Act must weigh both the employees' need for freedom of speech and their right to protection against political coercion. We believe H.R. 3400 clearly provides this balance. We commend the Committee for its attention to this important issue of voters' rights and look forward to working with you to ensure the passage of the Hatch Act reform.

Senator PRYOR. Mr. Peirce, thank you very much.

We will now hear from Mr. Robert Tobias.

TESTIMONY OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION [1]

Mr. TOBIAS. Good morning, Senator Pryor. Thank you very much for allowing NTEU to testify on Hatch Act reform.

The Hatch Act and what it signifies has become I think in large part a sacred cow, something we are supposed to accept without challenge; it has been in effect for a long time and, therefore some think it should go on forever.

I very much appreciate the fact that this Committee has pledged itself to look at the facts and the circumstances as they existed in 1939 when the Hatch Act was enacted, to look at the laws enacted since 1939 to protect employees from political coercion, and look at the proposed amendments that the House passed in H.R. 3400.

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[1] See p. 390 for Mr. Tobias' prepared statement.

I believe the amendments proposed can achieve the goals of increased political participation by Federal employees, that they can protect Federal employees from unwanted coercion, and they can ensure nonpartisan implementation of partisan legislation.

Common Cause recently circulated a letter urging defeat of H.R. 3400. Since I believe the issues they raised are important and commonly raised, I would like to discuss them. First, Common Cause points out that the Hatch Act was passed in response to a politicized Federal bureaucracy, with the implicit assumption, of course, that the amendments would constitute a return to the spoils system. Times are different today. 80 percent of the jobs in the Federal sector require a standard exam. MSPB was created to protect the merit system, and the Office of Special Counsel was created to prosecute violations.

Of course, in addition, the Criminal Codes are replete with protections and prohibitions. Some five provisions of title 18 talk about going to jail for coercing employees.

Second, Common Cause suggests that incumbent Presidents may seek to enlist a civil service army. In response, there is nothing that the law can or should do to prevent an employee from voluntarily participating in a political campaign. The law should protect employees from being coerced into participating and, of course, the laws I just identified in the Criminal Code do prevent coercion and the penalties for violating them would be increased under these amendments.

It is not enough to say that pressure may be subtle and therefore we should allow no participation. That seems to be a common argument. The same could be said about a sexual harassment case. And while some might have argued in 1940 that women should be protected from such harassment by prohibiting them from performing some jobs, hopefully no one would argue that today.

Our view is that we will make the laws against sexual harassment as tough and as enforceable as possible, but we will not limit a woman's right to work where she chooses in order to protect her.

We need to strike a similar balance with regard to protecting Federal employees. The possibility that an isolated case of coercion might go unpunished is not reason enough to deny 3,000,000 people the opportunity to participate to whatever extent they choose in the most basic elements of our democratic process.

Third, Common Cause suggests that a Government official in one agency may support a candidate and another official might support a second candidate and then asks rhetorically what is the implication for government policy. Of course, we have that situation now where the Vice President and former head of the CIA is competing against the Senate minority leader, whose wife is a former Secretary of the Department of Transportation. And, it is important to remember that most visible officials, those responsible for making policy, are not covered by the Hatch Act.

Fourth, Common Cause asks the question how can we avoid the appearance of retribution or favoritism if the supporter of a successful candidate is not awarded a Government contract. Again, I would answer that we have the problem today with top Government officials being un-Hatched, but we have a body of law to protect the person who is denied a contract and the amendments to the Hatch Act would enhance that protection.

I think the beauty of H.R. 3400 is its simplicity. Any political activity away from the job site on your own time is allowed. Any solicitation of an individual off the job with whom you do business is specifically prohibited and, as I understand it, there was some question about that raised yesterday about people in the government who deal with a Government contractor, people in the Internal Revenue Service who might deal with a taxpayer. But 7323(b)(1) (A) and (C) specifically prohibit that kind of activity.

We cannot advise our members on the law as it exists today about what they can do and what they cannot do, because it is so unclear, and so as a result most of them have opted out.

NTEU believes very strongly that the Federal workers we represent should not be subject to political coercion. We also believe, however, that the paternalism of the current Hatch Act laws is unnecessary and totally out of step with the laws, customs and beliefs of this post-Watergate world. Certainly, if our young children can be asked to have enough backbone to just say no to dangerous street thugs trying to sell them drugs, Federal employees, in return for the opportunity to freely exercise their political rights, can be expected to just say no if an improper request is made.

When the Hatch Act was adopted, there was no such thing as the Federal Election Commission. Today, as I am sure you are well aware, every aspect of Federal campaigns is subject to disclosure and regulation. There was no Merit Systems Protection Board and there was no press that is as active today as it was then. The Hatch Act may have been a good idea in its time, but it is not 1939 any more.

The provisions of H.R. 3400 make much more sense in today's world. No political activity on the job site, any political activity off the site, and increased penalties for coercion.

I really thank the Committee for its interest in this very important matter and I look forward to working with you on the bill.

Thank you.

Senator **Pryor**. Thank you very much, Mr. Tobias.

Mr. Murphy?

TESTIMONY OF EDWARD MURPHY, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES [1]

Mr. **Murphy**. Good morning, Mr. Chairman.

NAGE is an affiliate of the Service Employees International Union, the fourth largest union in the AFL–CIO. On behalf of the Federal employees across the country, we welcome this opportunity to present our views on H.R. 3400.

It has been almost 50 years since passage of the original Hatch Act. Many of the relevant circumstances which led to the passage of that law have changed. The size of the Federal employee workforce has tripled and now the vast majority of the workers are covered by a merit based employment system that effectively insulates employees from the types of abuses and coercion which earlier generations may have experienced.

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[1] See p. 402 for Mr. Murphy's statement.

Under the merit system, an employee discharged or suspended from the job has the right to a hearing before the Merit Systems Protection Board. In addition, the majority of Federal workers are protected by Federal employee unions and are protected by collective bargaining agreements which provide for arbitration of any disciplinary action. Thus, the modern worker enjoys broad job protections not accorded to workers in 1939, yet there have been no major amendments to the Hatch Act to reflect these changed circumstances.

Modification of the Hatch Act is long overdue. The First Amendment to the Constitution guarantees to all Americans the right to participate in the political process and to influence the formation of government in accordance with democratic ideals. Any limitations of this freedom must come under strict scrutiny. The Hatch Act as it is currently framed denies this fundamental right to millions of Americans unnecessarily, solely because they have selected careers in the Federal service. We see no evidence to support such a broad prohibition on partisan political activities in 1988. We note that over 40 States currently have less restrictive prohibitions on political activities of their own public workers. We are aware of no significant problems in these States.

There is frequently little difference between the duties of Federal and State workers of the same profession and job classification. Does anybody, for instance, believe that a typist for HHS has duties different from a typist for the Division of Motor Vehicles in the State of Virginia or Arkansas or Massachusetts? We can also point to dozens of jobs in the private sector which have broader influence over the lives of individuals than the vast majority of Federal jobs, yet these individuals successfully perform their duties without any restrictions on their political activities.

We can see nothing intrinsic in Federal service that warrants such a complete prohibition of political activities. NAGE strongly supports H.R. 3400, which provides a long overdue updating of the Hatch Act. Basically, this legislation would allow Federal employees the right to participate in partisan political activities off the job, while prohibiting all activities on the job.

The bill clearly enunciates the types of Federal employee conduct which are acceptable and those which are not. As a result, workers would no longer have to forego their rights to participate in the democratic process out of ignorance or confusion over the current regulatory application.

Mr. Chairman, H.R. 3400 is legislation which enjoyed broad bipartisan support in the House following months of extensive negotiations with Democratic and Republican leaders. We are committed to passing this needed reform and willing to work with leaders in the Senate to do whatever is necessary to move this bill.

H.R. 3400 recognizes and protects the unquestionable need for a fair and impartial Federal workforce. At the same time, the bill remedies the overly broad restrictions of Federal employees' First Amendment rights. In this manner, it balances the dual interests of sound, fair government and protects fundamental constitutional rights.

We thank you for this opportunity to appear and testify and look forward to working with you to pass Hatch Act reform.

Thank you.

Senator PRYOR. Mr. Murphy, we thank you.

Ms. Tagen?

TESTIMONY OF JULIE TAGEN, FEDERAL MANAGERS ASSOCIATION [1]

Ms. TAGEN. Good morning. Thank you for inviting us to testify on Hatch Act reform legislation.

We appreciate the opportunity to express our views on this important legislation. My name is Julie Tagen and I am Legislative Assistant for the Federal Managers Association. I am filling in for Mike Minahan, our National President, who was taken ill earlier this week.

Our organization represents over 20,000 managers and supervisors in virtually all of the agencies. It is always tricky to amend a law that was originally designed to protect workers. The Hatch Act was passed so that Federal employees would be free from on-the-job pressures of partisan politics. Today, it serves as more of a handicap than a help.

From conversations with our members, it has become painfully clear that one of the main problems with the current legislation is that it is hopelessly unclear, what is allowed, what is not allowed. Rarely do two people answer in the same way.

It has been our experience that because the law is confusing, it is often over-enforced. In many cases the law is used as a sword, rather than a shield by those who want to stifle free thought and legitimate fact-finding. For example, at one of our Naval Ordinance Stations, the FMA Chapter and another group host a banquet each year. They had invited a former Member of Congress who had chaired the Federal Government Service Task Force. His topic, announced on a flyer and distributed to employees and managers alike, was to be a review of civil service issues.

Two or three days before the banquet, the Human Resources Officer at the base called our Chapter president and the cosponsoring group's president. The officer stated that both organizations would be violating the Hatch Act if they held the banquet. If they did not cancel the banquet, the officer would stand at the door and write down the names of everyone who attended. The names would be turned over to the Office of Special Counsel as violators of the Hatch Act. The two presidents felt that the officer's actions were wrong, but they did not want to put their members in jeopardy. As a result, the banquet was cancelled. The employees were clearly intimidated by the officer's action.

When we heard of this, we wrote to the Office of Special Counsel, asking for an opinion of the Human Resources Officer's actions. The reply we received was not helpful.

OSC began by stating that the banquet was not in violation of the Hatch Act, but the OSC concluded by advising that, in order to avoid any semblance of violation, organizations should not schedule events at which candidates could make a speech. At what point in a Member's term would you not be considered a candidate? Would the OSC's opinion always prevent a Federal manager or employee from inviting a Member of Congress to a speaking engagement? This opinion, as far as we are concerned, is useless and illogical. It points up the problem of enforcing a confusing statute. Federal managers and Federal employees should be free to have briefings on issues of importance to them. With the current Hatch Act in place, even this simple right is in jeopardy.

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[1] See p. 411 for the Federal Manager Association's prepared statement.

Some people have voiced objection to the bill, stating that it will lead to increased politicization of the civil service. This is merely a "scare tactic" by those opposed to giving Federal employees any increased rights. H.R. 3400 clearly states that there is no politicking on the job or on the work site. Federal employees are Democrats, Republicans and Independents, just like everyone else. Allowing them to gather signatures or stuff envelopes for a candidate after work is hardly likely to turn them into a political zealot on the job.

We know many people, and I am sure you do, too, who are politically active off the job, but politics do not enter into how they perform their job. It would be the same with Federal employees. We, as managers, believe we set a high standard for integrity in the civil service. We would not change that for any reason.

An argument raised by those who oppose H.R. 3400 is that managers and supervisors will not obey the law even if it does contain strong protection from coercion. We represent 20,000 managers and supervisors, and we can tell you that this kind of talk is insulting. We work hard to maintain the integrity of the U.S. Government. We manage the laws that Congress makes. We certainly obey them.

Even looked at in the worst light, it may be true that a few will break the law, but is it not true that some people break laws? Do we want to forget sexual harassment laws or anti-discrimination laws because someone will break them anyway? We must ask ourselves, is it time to grant Federal employees the same rights as other workers? If the answer is yes, and it is, then let us move ahead.

The Federal Managers Association would like to work with this Committee to ensure passage of Hatch Act reform in the 100th Congress.

We would like to thank you for giving us the opportunity to express our views.

Thank you.

Senator **Pryor**. Ms. Tagen, thank you for your testimony.

I was especially interested in the banquet situation, the one that was cancelled. I was struck by that. I just wonder if this goes on throughout the entire Federal system. I wonder if situations like this occur. Do you know of other situations similar to this?

Ms. **Tagen**. Not that I am aware of, to my knowledge.

Senator **Pryor**. Do you happen to know how recent the cancelled banquet situation was?

Ms. **Tagen**. That was in 1986.

Senator **Pryor**. 1986, so it is recent.

Ms. **Tagen**. Yes.

Senator PRYOR. We are glad to have Senator Levin join us this morning. Senator Levin, do you have any comments or statements or questions?

Senator LEVIN. Mr. Chairman, thank you, and I welcome the panel.

I am wondering if each of the panelists would react and give me an answer to this question, as to whether or not they see any merit in imposing stronger restrictions on managerial-supervisory personnel, as distinguished from non-supervisory personnel, since the managers and supervisors are at least arguably in a position both to be subject to coercion from higher-ranked presidential appointees and to impose such coercion on others. It may be an appearance problem only, but could you comment on that? Do you see any merit in having different rules? Mr. Murphy, do you want to start off?

Mr. MURPHY. Senator, I would think a better way to protect against the improper use of influence is to specifically prohibit those activities. I think if you start prohibiting people from taking action, you run the risk of having an overly broad restriction and preventing people from exercising the First Amendment rights who otherwise should be able to do so, and I think you can accomplish the same thing by prohibiting certain activities.

Senator LEVIN. Well, for instance, if a manager or supervisor gets directly involved in a campaign, that may send a message to the people that he or she supervisors. Those people may think that they are more likely to get a promotion or be treated better if they go down to the campaign office and join their supervisor and stuff envelopes or appear at a rally or whatever it is, and I must say that troubles me.

I see a difference, obviously, or else I would not ask the question I asked. On the other hand, I do not see any difference if you have two clerks in the Veterans' Administration, and if one of those clerks goes to a campaign office, I do not see any particular pressure on the other clerk to do so. I do not see any difficulty with that. In other words, I do not have any great difficulty in having that clerk at the VA go down to a campaign headquarters and stuff envelopes. This is not permitted under current law.

I obviously see the difference, and I am wondering if you do not see at least some difference, in having a supervisor who is known to be active in a campaign and whether or not people under his or her supervision might not try to curry favor with the supervisor by also participating in the campaign. Is that not a kind of coercion or influence that we would like to avoid?

Mr. MURPHY. I think there is some distinction to be made there, but it is not any different than the private sector, and certainly supervisors there are involved in campaigns, certainly some employees think they can curry favor by acquiescing to the political wishes of the supervisor. Federal employees are not children, they have backbone and they can make decisions one way or the other.

Senator LEVIN. Do we not argue that government is different than the private sector in a number of respects, though? Sometimes we are given the analogy to the private sector and it is suggested we ought to do something exactly as the private sector does. I am the person to say wait a minute, the private sector is different, it has got to make a profit, for instance. Its goal is legitimately that. We have got a little different goal, which is to serve a social purpose, even if it is not economically profitable. So, I do not know that to say the private sector does it a certain way is the perfect analogy for government employees, for lots of reasons.

Let me go to the other members of the panel. Do you see any difference between supervisory and non-supervisory employees?

Mr. TOBIAS. I think the real issue, Senator Levin, is in the area of solicitation of money, and 7324(a) talks about soliciting money from supervisors, soliciting money from subordinates, and I think that that is very clear language. Prohibiting that kind of activity. I think it is much less likely that we are going to have a plethora of people running for office and somebody trying to curry favor. What would be more likely is a supervisor who would be trying to solicit funds from a subordinate. This is prohibited under the Act.

Senator LEVIN. Where do you see that under (b)(1), (A), (B), or (C)?

Mr. TOBIAS. 7324(a)(3), knowingly give or hand over a political contribution to a superior of the employee.

Senator LEVIN. Or solicit?

Mr. TOBIAS. I am sorry?

Senator LEVIN. You do not prohibit the solicitation or prohibit the delivery.

Mr. TOBIAS. In (4), knowingly solicit or accept or receive——

Senator LEVIN. I see it, in (4)(A).

Mr. TOBIAS. Yes.

Senator LEVIN. OK. So it gets back to the problem of the participation in the non-contribution area. For example, if my superior is active in the Gephardt campaign, I think there might be some pressure upon me to join that campaign. It may be subtle. On the other hand, if my co-worker is involved in the Gephardt or whatever campaign, I am not sure there is any pressure on me whatsoever. I just obviously see a difference, putting aside the contribution issue you have got covered there. Do you not see a subtle pressure if my superior is going down every night to work in a presidential campaign?

Mr. TOBIAS. It is certainly possible. We see it in a less–sometimes we see it in a less important area and that is soliciting of government bonds or soliciting Combined Federal Campaign contributions and a superior is leaning on people, but I can tell you that we have responded to that kind of coercion.

Senator LEVIN. Mr. Peirce?

Mr. PEIRCE. I tend to agree with what my colleagues have said so far. I will say this, however, I think that there is no way in the world that you can actually put anything into law that is going to take away the part that you are talking about, because some people will in fact recognize a threat, whether it is there or not.

Senator LEVIN. There is a way to put it into law, and that is you keep the current law for supervisory employees.

Mr. PEIRCE. Well, I do not think that is going to do it, though. As far as the Hatch Act is concerned now, there are other things. But what I am saying is the fact that this supervisor is going down and stuffing envelopes, he has not said anything to the employee, the employee may feel something but maybe the supervisor has not violated anything, or vice versa, maybe he has a bumper sticker on his car.

I am just saying that some would view this as possibly or potentially as a threat, but if people are looking for that kind of thing they are going to find it somewhere anyway. I think the large majority and I think the processes that are written in here give the protection for the employees.

Ms. **Tagen**. We basically believe the same thing, that we think it is important to treat all employees the same and that the restrictions in the bill are adequate for that.

Senator **Levin**. Okay. Some employees are at least arguably in more sensitive positions than other employees, such as law enforcement personnel and IRS agents. I have more difficulty with the idea of an IRS agent soliciting funds, for instance, from people than I do with that poor clerk in the VA that I keep referring to. Do any of you see any difference between law enforcement personnel and non-law enforcement personnel, just kind of a quick yes or no. Do you see any difference at all that we might establish, keeping current law in effect for law enforcement personnel, such as IRS agents? There are a number of other law enforcement personnel I could identify, but you get the drift, I think. Why do we not start at your end, Ms. Tagen?

Ms. **Tagen**. No, we think that all employees should be treated equally.

Senator **Levin**. You do not see any difference at all?

Ms. **Tagen**. No.

Senator **Levin**. Mr. Peirce?

Mr. **Peirce**. No.

Senator **Levin**. Mr. Tobias?

Mr. **Tobias**. No, because it is 7324(b)(1)(C) which clearly covers those kinds of issues, and (b)(1)(A). Those sections specifically deal with the issue of contractors, people involved in contractual matters with the outside or anyone who has interests which may be substantially affected by the performance or non-performance of the employee's official duties, which would clearly cover an Internal Revenue Service employee. We think that the law as drafted covers the situation.

Senator **Levin**. Give me that exact language.

Mr. **Tobias**. I think it is on page 7 of the bill.

Senator **Levin**. What subsection?

Mr. **Tobias**. (C), (b)(1)(C).

Senator **Levin**. Now, say the agent is soliciting funds from somebody that he does not audit. Would that be covered?

Mr. **Tobias**. It would not, and I see no problem with that.

Senator **Levin**. Say that that person knows that the person who is soliciting funds from him is an IRS agent?

Mr. **Tobias**. Well, I still do not see any difference.

Senator **Levin**. He is in the Audit Section, a person who is auditing.

Mr. **Tobias**. I do not see any difference, just like I do not see any difference if an IRS employee is selling Fuller brushes door to door in the evening and the neighbors know that he is with the IRS. That does not mean that they have to buy Fuller brushes.

Senator **Levin**. You do not think that a business person who is solicited by an IRS agent for a partisan campaign, even though that agent does not do the direct auditing, but he is a colleague of the person who does do the direct auditing and is in the same office, that there is any subtle pressure that would be felt by the business that is solicited?

Mr. **Tobias**. I do not know what would be in the mind of the person who is solicited.

Senator **Levin**. Is that important?

Mr. **Tobias**. I think not, in terms of defining the rights of the employee who wants to participate. I mean, we all resent being solicited for funds occasionally and we all resent saying no.

Senator **Levin**. The difference here is that there is a very negative social spinoff. People resent that government employee coming to them and soliciting funds and they think that is putting pressure on them. It seems to me that has a very negative impact on people's confidence in government, and therefore I think what goes through the mind of the average citizen is important. I would differ with you on that. I think the average citizen does not care if that letter carrier in off-hours is stuffing envelopes at some political headquarters. I do not think the average citizen cares. I think the average citizen does care if that letter carrier comes to the door and says, "Can you give me five bucks for George Bush or Dick Gephardt," or whatever.

Now, you may or may not have covered that, although the language is a little fuzzy on this solicitation issue, but I think you get my point, and this, I think, is what we have to address. Is the view of that average citizen relative to the activity of that Federal employee important? And I think there I would say it is very important and we ought to focus on where average people would say, yes, it does not bother me that a Federal employee is doing something, and there I think we ought to start broadening the rights of employees to engage in the democratic process. But where there is a negative reaction, it is at least reasonable on the part of the average person out there to be concerned about the broadening of the rights of the employee. I think we ought to be very careful because we are talking here about a credibility issue, credibility in government. I will close here, because a number of my colleagues are here now and I do not want to take up too much time. That is why I think what we ought to do is identify those types of positions, such as supervisory positions that can have an impact, a coercive impact perhaps on colleagues, subtle or otherwise. I think we ought to talk about several types of positions, including law enforcement positions. I think most people would say they do not think IRS agents ought to be soliciting funds even from people they do not audit. That is the way I react. Maybe I view myself as a typical citizen. I think we ought to talk about types of activities as well and perhaps say solicitation of funds, for instance, would be prohibited altogether.

You put your finger right on it, Mr. Tobias. I do think that we must look at the reaction in the mind of the average citizen or else we are not going to get anywhere with this bill.

Mr. **Tobias**. Well, obviously when legislation is enacted, the impact on the public is important, but I also think that, on the other hand, balanced against that you have to look at what is being denied the employee. And to legislate because someone somewhere might resent it or we might have some theoretical idea that it might be resented, we do not have any objection to drawing those lines tight about imposing overt coercion or implicit coercion on people. It is the issue of trying to legislate in the minds, to cover the mind of the public that we would have a problem with.

Senator LEVIN. Again, Mr. Chairman, if I could take 30 more seconds. I am not talking about someone, I am talking about the average reasonable citizen out there, how they would respond to being solicited by a Federal employee, and by what type of employee, what position that employee holds, whether the activity of the employee is solicitation directly of someone in the public or participation in a political campaign or some other forum.

All I can tell you is I think that the reaction of that average reasonable person out there is critical to what we are doing. We have to now focus on what activity would that average reasonable person not object to, and I think there is a host of activities right now which are denied Federal employees to which that average reasonable citizen would not object. I think there we ought to say, hey, wait a minute, we are denying fundamental, basic, democratic rights for no public policy reason.

Nobody cares if the letter carrier in the evening is stuffing envelopes at a party headquarters. Then why are we denying the right of that person to engage in that activity? What public purpose are we serving? The answer is, I do not think we are serving a public purpose.

Mr. TOBIAS. Well, no one would suggest, for example, that an Internal Revenue Service employee would be prohibited marching around his neighborhood and collecting for the United Way, whether he works for the Federal Government or not, whether he is an Internal Revenue Service employee or not. It is okay.

Now, someone might resent the fact that this neighbor, who is an Internal Revenue Service employee, is soliciting funds and I do not want to give to the Cancer Fund and so I have to say no, I am not going to give. Now, I frankly do not see the difference between soliciting funds for the United Way and in my mind worrying about saying no, and soliciting for Dick Gephardt.

Senator LEVIN. Do you see any difference between that IRS employee working in a campaign office and having a direct contact with the citizen?

Mr. TOBIAS. No, I do not. I really do not, not if it is off-duty.

Senator LEVIN. I have got to tell you, if I were in business and an IRS auditor came to me and asked me for a campaign contribution, I would resent it, even though that is not the auditor that is specifically auditing me at the moment. That auditor may be the buddy of the auditor who is or may be some day auditing me, and I would have a little bit of fear and apprehension if an IRS auditor came to me and said, "can you contribute $100" for whatever campaign.

Mr. TOBIAS. Would you have the same trepidation if it was, would you contribute $100 to the United Way?

Senator LEVIN. Probably less.

Mr. TOBIAS. But it would be there?

Senator LEVIN. It would be there to a degree, but a lesser degree, and that is something which we cannot regulate. I do not want an IRS auditor who might audit me coming to me asking for anything. [Laughter.]

Mr. TOBIAS. I understand that, but there would not be any problem even if they did.

Senator LEVIN. But no one is suggesting that we have a way of regulating whether that IRS auditor can solicit for the United Way, so——

Mr. TOBIAS. Of course there is. Of course there is. The agency regulates those kinds of activities all the time, and the Congress could pass legislation that prohibited all Federal employees from soliciting for anything. I mean there is no——

Senator LEVIN. I see a difference between a political campaign and a general charitable purpose, and I think the average citizen would react differently. We ought to take into consideration the feeling and reaction of that average reasonable citizen out there, not what any one citizen might feel at any one time. I am talking about just the average reaction.

I might be wrong in assessing it, by the way. I mean this is not a scientific assessment that I am giving you. I am just telling you this is kind of my feel as to how the average reasonable citizen out there would react.

Mr. PEIRCE. Senator, may I address that just briefly? I think the fact that we are talking about somebody resenting something, we can find all kinds of reasons to resent something. I resent something if a particular individual comes to me and solicits for a candidate that I do not support. I resent that, but I respect his right, and I think you can carry that the full circle.

I might resent an IRS auditor, too, but I respect his right to do it. I do not want to consider it to be a pressure on me from that standpoint. If we are looking to trying to find out what people are going to resent and try to eliminate that, we are going to eliminate everything, because clear across the spectrum people resent things. I resent them waking me up in the morning to solicit me for Cancer Society or anything of that nature. I want to sleep. I resent it.

Senator LEVIN. I think there is a reasonable basis for the resentment if some law enforcement officer of the Federal Government comes to me and solicits me for a political campaign. I think that that is a reasonable reaction.

Thank you very much, Mr. Chairman.

Senator PRYOR. Thank you each for your testimony.

Our last panel consists of Mr. John F. Tarburton, of the American Farm Bureau; Ms. Adele Spielberger, Federal Executives Institute Alumni Association; and Mr. Jim T. Bland, Federal Bar Association.

We are most indebted to our three panelists who are appearing on our last panel. At this time I am going to ask Senator Roth to make whatever statement he would like to make.

Senator Roth.

Senator ROTH. Thank you, Mr. Chairman. I will be very brief. I want to especially welcome my good friend and fellow Delawarean, Jack Tarburton. You know, a lot of people do not realize that Delaware is essentially an agricultural State. I know you do, because of our mutual interests in working with you on poultry matters.

Jack is a very successful family farmer. He is President of the Delaware Farm Bureau. But he is a leader in many things, Mr. Chairman, not only in agricultural matters, where he has been both the JC Young Farmer of the Year, as well more recently the Delaware Farmer of the Year. He is much involved in community affairs. For example, he has been awarded the Silver Beaver Award for his outstanding community service.

He has had some government experience, having worked for the Pentagon. I trust that has not biased him too much. In any event, I just want to welcome you, Jack, for taking the time to be here with us today.

Mr. TARBURTON. Thank you, Senator.

Senator PRYOR. Thank you, Senator Roth.

In fact, we will take your testimony at this time, Mr. Tarburton. We will observe the 5-minute rule; we hope you will cooperate with that.

Mr. Tarburton.

TESTIMONY OF JOHN E. TARBURTON, AMERICAN FARM BUREAU FEDERATION

Mr. TARBURTON. Thank you, Senator Pryor. Thank you very much for the kind introduction, Senator Roth, and thank you for this opportunity to testify.

My name is John F. Tarburton and I own and operate a farm near Dover, Delaware, and serve as President of the Delaware Farm Bureau and a member of the Board of Directors of the American Farm Bureau Federation. I appear here today to speak for both organizations.

The American Farm Bureau Federation is the Nation's largest general farm organization, with a current voluntary membership of 3.6 million farm families, who join nearly some 2,800 county farm bureaus in 49 States and Puerto Rico.

You may be wondering what interest farmers and ranchers have in the Hatch Act. We have always had the philosophy in the Farm Bureau that farmers are citizens first and farmers second. We have long taken the position in nearly everything that goes on in the Federal Government and in Congress is of interest and concern to the farmers as citizens and taxpayers.

Many of our members still remember what it was like before the Hatch Act became law, when Federal and State employees were exploited and coerced for partisan control purposes and when public servants took advantage of their positions of public trust to achieve political goals. The enactment of the Hatch Act also had a profound influence in the enactment of similar laws in most States concerning the political activities of State and local government.

We are part of that old school of thought that has long operated on the basic premise that "if it ain't broke, don't fix it." So far as we are concerned, the Hatch Act is as valid today as it was in 1939. It has a proven record of protecting Federal employees from intimidation for political purposes and assuring the taxpayers that their taxes will not be spent for partisan politics through political activities of Federal employees. We see no valid reason to change it.

We simply do not agree with those who say that Federal employees should be free to participate in the "political process" like anyone else. We do not believe that Federal employees can have their cake and eat it at the same time. If they want the protections afforded by the civil service merit system, they should be willing to forego certain prescribed political activities.

It is clear to us that the public employee segment of organized labor is becoming a dominant force in the labor movement. The public employee unions, working in concert with the AFL-CIO, and using union dues money for non-monetary assistance to political campaigns, want to become far more influential than they are now in the decision-making process in the Congress and in the Federal Government as a whole. We can understand that ambition, but we do not think the Congress should pave the way for it by weakening the Hatch Act.

The credibility of this Congress and the Federal Government in general is already in need of revival. We can think of no more certain way to destroy it altogether than giving Federal employees license to engage in partisan politics.

Enactment of this bill would inevitably lead to political pressures for Federal employees to support, in various and ingenious ways, candidates who as member of Congress have been most generous in voting for legislation to benefit that special interest group, or candidates who promise to be most generous in protecting their interests.

So, therefore, we urge defeat of H.R. 3400.

Thank you.

Senator PRYOR. Thank you, Mr. Tarburton.

Senator Roth?

Senator ROTH. Yes, if I may, Mr. Chairman, ask a question or two of Mr. Tarburton.

Do you believe that the Hatch Act should apply at all to State employees receiving Federal funds? Has the Farm Bureau taken a position on that?

Mr. TARBURTON. It is a little more broad than that, Senator Roth. The situation is that for any person who has the regulatory authority to grant de facto comparative advantage, in other words those people who grant permits or franchises or licenses which in effect give the comparative advantage to an individual should be well covered under the Hatch Act.

Just as an example, a person working with an owner or manager of a TV station who may be processing the application for the license should not have the implied authority to be able to solicit funds from that manager on behalf of a candidate. The implications are clear.

Senator ROTH. And you would apply the same rule to State employees?

Mr. TARBURTON. Yes, we would. Yes, we are for that.

Senator ROTH. I believe those are the only questions I have, Mr. Chairman. Thank you.

Senator PRYOR. I may have some questions, but I believe we will now call on Ms. Spielberger. We appreciate your being with us this morning.

TESTIMONY OF ADELE D. SPIELBERGER, PRESIDENT, FEDERAL EXECUTIVE INSTITUTE ALUMNI ASSOCIATION

Ms. SPIELBERGER. Thank you. I am President of the Federal Executive Institute Alumni Association and I am pleased to appear before you to present the views of our association relative to reform of the Hatch Act. I thank you for the opportunity to do this.

In addition to my statement, I would like to include for the record a copy of our February 1988 special newsletter,[1] which summarizes the results from a poll of our 2,300 members, 79 percent of whom are currently employed Federal executives.

Our members serve in the highest ranks of the Federal service, in both career and political positions. They are all graduates of the Federal Executive Institute, the premier trainer of executives and managers in the Federal service. This is the eighth year we have sought our membership's views on various issues affecting the functioning of the Federal Government.

The association has reviewed H.R. 3400 and recommends that this Committee not support this bill. We believe that the efficiency, effectiveness and morale of the civil service and the public confidence in the Federal workforce would be adversely impacted if the proposed changes were adopted. The Hatch Act was intended to insulate career employees from political pressure, but enactment of this bill would encourage just such pressure. In fact, the passage of this bill could easily spell the end of the professional civil service and reentry of the political spoils system.

Granting leave for political purposes would raise an additional set of problems. The decision to grant or not grant leave for campaigns could well be construed as a partisan political decision, rather than the exercise of sound management practices. Certainly, the returning employee would no longer be viewed as impartial. The appearance of impartiality of the public servant is as critical as the actual impartiality to ensure the public's confidence in their government.

Almost all of our members have served with dedication and skill through the Johnson, Nixon, Ford, Carter and Reagan administrations, and over 40 percent have 25 to 34 years in the government. We careerists remain in government as Cabinet Secretaries and Administrators change, and we recognize with pride the continuity and responsiveness that we provide to the Federal service in the face of shifts in political philosophies.

We are asked to impartially evaluate proposals and issues that are frequently the subject of great partisan debate across the country and on the Hill. We think it is extremely important that our views be given the weight and regard of dedicated civil servants not subject to excessive political pressures.

Enactment of this bill could result in an explosion of charges of conflict of interest and inappropriate behavior on the part of Federal employees. This would further erode an already diminished confidence of the public in their government.

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[1] See p. 484.

Out of 1,332 responses to our questionnaire, over 60 percent of our members indicated their desire that the Federal Executive Institute Alumni Association not actively support this issue. I think that the message from our membership is clear.

Thank you for the invitation to address the Committee.

Senator PRYOR. Thank you very much, Ms. Spielberger.

Mr. Bland?

TESTIMONY OF JAMES T. BLAND, JR., PRESIDENT, FEDERAL BAR ASSOCIATION[1]

Mr. BLAND. Mr. Chairman and Senators, my name is James T. Bland, Jr., and I am a native and life-long resident of the great State of Tennessee, and I happen to be the first Tennessean to have the honor of serving as President of the Federal Bar Association.

I very much appreciate the opportunity to appear before you today to testify on behalf of the Federal Bar Association.

Senator PRYOR. Mr. Bland, you are already in deep trouble because your senior Senator from Tennessee just walked in.

Mr. BLAND. I noticed that, Senator. [Laughter.]

Senator PRYOR. I know he will want to make some comments.

Mr. BLAND. Senator, I especially appreciate you and the senior Senator from Tennessee in arranging for my testimony today.

Senator PRYOR. We are glad to have you.

Mr. BLAND. One of my first duties as President of the Federal Bar Association was to testify before the Senate Judiciary Committee concerning the confirmation of Judge Robert Bork. After waiting some 6½ hours to testify, with no lunch or dinner and missing my return flight to Memphis, I was finally called at 8:30 p.m., on Friday night, to testify as the last witness. By that late hour, only Senator Thurmond and Senator Humphrey were still there. Even C-Span had left and gone to a tape-delay basis. So, Senators, I am very pleased that you have stuck to your schedule today, which will allow me to catch my return flight, and I will try to do the same.

Pursuant to Senator Pryor's request, I have furnished the Committee with copies of my written remarks, which I ask at this time to be made a part of the record.

Senator PRYOR. They will be made a part of the record.

Mr. BLAND. You can read the three pages of this report and really condense them into three sentences, it gives you the gist of my organization's concerns about H.R. 3400. I want to summarize those concerns for you today and tell you of the problems that we foresee as a result of its potential passage without amendment.

I think it would be most helpful to you, before I comment on our specific concerns, that I try to give you a picture of exactly what and who the Federal Bar Association is and what our purposes are.

We are an organization that was formed a little over 67 years ago, primarily by a group of U.S. Government attorneys in the Washington, DC area. Through the years, we have grown to be a nationwide organization, with more than 15,000 members, represented by 90 local chapters throughout the United States and Puerto Rico. Approximately one-third of our members work in the Washington, DC area, with the remainder scattered throughout the United States.

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[1] See p. 416 for Mr. Bland's prepared statement.

A little less than one-half of our membership consists of attorneys and judges employed by the United States of America. The rest are either attorneys who formerly practiced for the United States or who actively practice in our Federal courts or before a Federal agency.

You can say that we are a special interest group. We are a non-profit, non-partisan coalition of professionals who share one common goal, to promote the sound administration of justice. That is why I am here today, to espouse our viewpoint that H.R. 3400 will severely impede the sound administration of justice and, perhaps more important, the public's perception thereof.

Let me give you a little background on this legislation and how our position thereon evolved over the past several months. As you probably are aware, H.R. 3400 sped through the House of Representatives just prior to Thanksgiving, under House rules which prohibited debate on the measure and with no opportunity for amendments from the floor.

Upon its passage, our leadership was alerted to the content and the possible effects of this legislation, and we subsequently passed by unanimous vote at our December 12, 1987, meeting of our governing body a resolution, No. 88-4, which urges the United States Senate and the President of the United States to fully and carefully study the potential impact of this legislation on the fair and impartial administration of the laws of the United States, particularly as it may relate to law enforcement officers and officials, government attorneys in and out of uniform, administrative law judges, administrative judges and other independent adjudicators and election officials.

As the recognized spokesperson of the Federal legal profession and a member of the House of Delegates of the American Bar Association, we filed a report and recommendation with the ABA House of Delegates just prior to their mid-year meeting earlier this month in Philadelphia, Pennsylvania. The ABA adopted, without objection, our Resolution 88-4, urging the United States Senate not to approve H.R. 3400 in its present form.

Admittedly, our Resolution 88-4 was adopted after only a short period of time, due to the haste with which it passed through the House of Representatives. After its adoption, we referred this matter to our Career Service Section, which is comprised of lawyers and judges who have decided to make a career out of service to their government. The Career Service Section thoroughly studied the pros and cons of H.R. 3400 and proposed the resolution which just this past week was adopted as the policy of the FBA.

In conclusion, let me say that we are opposed to enactment of H.R. 3400 for three reasons: First, the Act fails to define the political activity permitted by Federal employees, instead leaving such definition to subsequent administrative regulations. This duplicates the principal criticism of the present statute. It leaves the operative phrase legislatively undefined and therefore subject to potential regulatory ambiguity, inconsistency and absurdity.

Second, while the Act would continue to make unlawful any pressure on an employee by his or her superior to engage in particular political activity, the Act in many ways might actually make it more likely, as a practical matter, that such an employee would feel prodded into such activities out of a sense of loyalty to his or her superior or out of pressure from that superior, real or perceived.

Finally, and perhaps most important, the Act does not acknowledge that the nature of the duties and responsibilities of some categories of employees, such as law enforcement officers and officials, government attorneys in and out of uniform, administrative law judges, administrative judges and other independent adjudicators, and election officials, requires that such employees be absolutely insulated from any possible risk of improper pressure in order to maintain both the fact and appearance of the integrity of the Federal Government. That is how it is now, that is how it should be, and that is how it should remain. Thank you, gentlemen.

Senator PRYOR. Thank you, Mr. Bland.

Senator Sasser.

Senator SASSER. Thank you very much, Mr. Chairman. I want to welcome Jim Bland before us this morning. We are glad to have him here and pleased to hear his testimony and delighted that he got to testify here at a decent hour today, Mr. Chairman, and did not have to do without his dinner as he did before the Judiciary Committee not too long ago.

Let me just say a couple of things, Mr. Bland. I want to congratulate you and commend you on a fine statement this morning. Essentially, your organization has three objections to the bill as presently proposed. One, as I understand it, is it fails to define political activity, and the second objection you raised is that it fails to designate properly those who may or may not be affected by the Act, particularly Federal law enforcement personnel.

Those two concerns of the statute, of the proposed bill, could probably be corrected by amendment. In other words, we could lay out precisely or define what political activity could be covered, and certainly could define what individuals would be covered under the Act.

Your third concern, that an employee might be subject to subtle pressure from an employer, is one that we probably could deal with. If your first two concerns were dealt with, what would be your organization's reaction to the legislation at that point? Would you be inclined to support it or be inclined to—or do you have a neutral position to it, or would you still be opposed to it?

Mr. BLAND. Senator, I think you have really hit the nail on the head. The two concerns you have addressed we think could be cured by amendments to H.R. 3400, defining political activity, rather than leaving it to OPM to come up with regulations that define that term, and exempting certain classifications of employees, particularly those involved in law enforcement, in the administration of justice.

Our third problem really deals with motivation of that employee for engaging in political activity. The Act seeks to permit or prohibit political activity by Federal employees based on the time when that political activity is done. It allows it off the job but not on the job, yet it does not address what is the employee's motivation for engaging in partisan political activity. We do not see any way that the Act could be amended to address that concern.

I think the organization would take the position that we would still oppose a wholesale amendment of the Hatch Act. We would certainly like to see those provisions incorporated in the bill, if a bill is to be passed, to address those two prime concerns: One, define what you mean by "political activity"; and, two, be sure that you consider what effect this is going to have on those that are involved in law enforcement and the administration of justice, and what effect that is going to have on the public's perception.

Senator **Sasser**. Let me ask you one final question. You say that one of the concerns of your organization is you do not want the Office of Personnel Management defining what "political activity" is. Does that flow from a distrust generally of OPM? There have been allegations made in the last few years that there are ideologues active and operating in OPM that have sought to circumscribe the rights of Federal employees, et cetera, et cetera, all sorts of accusations, and I am not going to pass on whether those accusations are valid or not.

Does your unease about having OPM define what is "political activity" flow from distrust of the Office of Personnel Management itself, or would you just be more comfortable with having the Legislative Branch lay it out in black and white on the front end?

Mr. **Bland**. Senator, I do not want to step on any toes, because we have a number of members who work for OPM, so I do not want to hastily criticize them, but I think as lawyers our position is we would like to have the Congress of the United States define what they mean by "political activity" in the legislation, rather than leaving it to an Executive agency to promulgate regulations which are going to eventually end up in the courts. We would rather have the Congress define precisely what they mean.

Senator **Sasser**. Thank you, Mr. Bland. And thank you, Mr. Chairman.

Senator **Pryor**. Thank you, Senator Sasser.

Senator Roth?

Senator **Roth**. I have one question.

Senator **Pryor**. Excuse me, Senator Roth. I am going to leave for about 2 minutes.

Senator **Roth**. Ok. Do you see a danger that if this legislation is enacted into law—and I would ask all three of you, Ms. Spielberger in particular—do you see this as a first step towards returning to the spoils system?

Ms. **Spielberger**. Yes, we do. I have to be careful of what I say, because I am here representing my institution, the Association. I think that there is something I could pull from the poll to put that in a little context for you.

When we asked people how they felt about the performance appraisal system as it is now, over half said they are unsatisfied with the way it is, over 70 percent of the GS-15's think it is a failure, and there are only about 20 percent who believe the SES bonuses are being given fairly.

Now, if you overlay that with something that does not even exist now by getting politics into it, I wonder if that would not even more erode the confidence of the people who are working in the government as to the fairness of the system for which they work.

Senator ROTH. Do either of you other gentlemen care to comment?

Mr. TARBURTON. Senator, I think carried to its logical extreme, that is exactly what would result, we would be doing away with the civil service system as we know it today and we would have a return to the political spoils system of the past.

Senator ROTH. I must confess, I think that is a reality. In fact, I can see at some future date some future administration saying, "If they are going to campaign against us, then to the victor belong the spoils." So I think that is a threat that is being ignored.

There has been some discussion about the pressure that would come from supervisors. I suppose there also could be some pressure from outside organizations as well to become involved, so that that problem hits from two different directions. Would you agree with that, Mr. Bland?

Mr. BLAND. Yes, Senator, I would. We see the pressure not only coming from supervisors, but we see it emanating from the government workers as well onto the members of the public.

Senator ROTH. Do you agree with that?

Ms. SPIELBERGER. Yes, I agree with that.

Senator ROTH. Mr. Tarburton?

Mr. TARBURTON. Yes, I agree with that. Since both States are heavily involved in agriculture, I would just use the lowest level Farmers Home Administration loan officer being able to solicit or at the implication of soliciting on behalf of a politician, and the fact that it is known by his clients, that is the farmers who are in the office trying to obtain loan or loan guarantees, since much of that activity of direct loans has been stopped, there is certainly an implied situation there of what should be occurring.

Senator ROTH. My last question, Mr. Chairman, I would ask all three: Are you aware of any significant desires on the part of Federal employees or State employees wanting change in the Hatch Act?

Mr. TARBURTON. I really do not have the basis to answer that question, Senator.

Ms. SPIELBERGER. All I can say about it is that the FEIAA is really a very conservative organization. We do not take stands on many things, but on this issue our elected board of some 12 people representing the membership feel very, very strongly that the Hatch Act is working and it should be left in place.

Senator ROTH. How about your fellow workers themselves, is there any great——

Ms. SPIELBERGER. The truth of it is, in my job in the Government, I do not talk politics. I do not talk politics to the people I work for and I do not talk politics to the people who work for me, and that works out for me really very well.

Senator ROTH. That is a good answer.

Mr. Bland?

Mr. BLAND. Senator, I think our membership feels that there does need to be some housekeeping measures with the Hatch Act, primarily as a result of some of the absurd regulations we now have implementing the Hatch Act.

For example, as I understand it, employees are permitted to have a larger political sign on their vehicle than they can have in their front yard, which is a little absurd, so we think there needs to be some legislative corrective action taken, particularly to define what can and cannot be done, rather than leaving it to the regulations.

Senator ROTH. There is no question but that the maze of regulations is very confusing and perplexing and is something that should be addressed.

Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Senator Roth.

Just a few very quick questions. First, Ms. Spielberger, just so the Committee will know, tell the Committee, if you would, the general composition of the membership of your organization. I am not talking about the number, I am talking about the people who make it up. These are former Federal employees, is that correct?

Ms. SPIELBERGER. Most of them are current Federal employees.

Senator PRYOR. Most of them are what?

Ms. SPIELBERGER. Are current Federal employees. There are some retired Federal employees, but the bulk of them they are current Federal employees. The people who responded to this questionnaire—and I think they represent the membership—are about half and half; half GS-15's and half members of the Senior Executive Service, and they are for the most part career servants. There are some political appointees within the membership.

Senator PRYOR. One of our participants this morning in a previous panel used the phrase something like this "* * * is the Hatch Act being used as a sword or as a shield * * *," and I think that all of us, I am not saying I am going to vote for or support in total H.R. 3400—are attempting to achieve a balance.

Mr. Bland was talking about maybe some amendments to clear up some things, and I am very much of the opinion now that we need to have some clarification of this law. This law is one that we are asked about many, many times, not only when we are running for reelection but also in town meetings when we have discussion groups with our people. I must say, as I said yesterday, it strikes a very, very emotional chord.

I know very well the authors of the House legislation, and I do not think that any of those individuals who authored and pushed H.R. 3400 through the House and sent it to the Senate, had the idea nor the goal of politicizing the Federal worker and the Federal workforce. I do not believe that is their mission. I do not think that is the mission of the unions that represent many of those employees, and I do think that what we are doing, we see an age-old problem that we hear a great deal about. Our government spends massive amounts of money. We saw the publications that were sent out yesterday to Federal employees by the Federal agencies, telling the employees what they can and cannot do. And when we have to do that to our Federal employees every election cycle, then I think that says that we have got a problem, and I think it is incumbent upon us to examine that problem, even though the examination process may not be very exciting and may be somewhat exhausting.

I know we have a situation with farmers. I know in my State, Mr. Tarburton, many of our farmers during the winter months, like right now in February—you cannot plant, you can work on your equipment and machinery—so some of them work, maybe on an intermittent or part-time basis, for the Federal Government, and they are Hatched. Well, after 3 or 4 months, they go back out to their farms and they are classified, I believe I am correct, as intermittent Federal workers. They are under the Hatch Act even though they are out working on their farms, I think that is the interpretation of the Hatch Act.

I think there are things like this that need to be changed. I know H.R. 3400 is even more restrictive than the present Federal Hatch Act on the Federal employee, absolutely prohibiting that Federal employee from wearing a button while on his or her job, so it goes a little further in that respect.

I think we are trying to achieve a balance. I know that some of you feel, in speaking for your organizations, that you do not want to see any changes. I think we are all going to live to see some changes, and the question is what are those changes going to be? I hope we will work together very constructively and positively to achieve those changes.

We have another situation, Mr. Bland, and you brought up a couple that we also need to look into. We have a situation where a Federal employee, who is covered by the Hatch Act, is working on a job and that job suddenly disappears—it is given to the private sector, or he is told that he is being replaced by a consultant or that his job is being contracted out—but that same person in the private sector doing the same job, working in the same place, escapes the provisions of the Hatch Act.

There are situations like this and other areas brought out during our two days of hearings that I think we have got to examine. With that said, I want to thank our colleagues who have attended this morning and our witnesses for their testimony.

This Committee is adjourned. Thank you.

[Whereupon, at 11:55 a.m., the Committee was adjourned to reconvene at the call of the Chair.]

100TH CONGRESS
1ST SESSION

H. R. 3400

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 1987

Received; read twice and referred to the Committee on Governmental Affairs

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AN ACT

To amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees' Political Activities Act of 1987".

SEC. 2. POLITICAL ACTIVITIES.

(a) IN GENERAL.—Subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"§ 7321. Political participation

"It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of our Nation.

"§ 7322. Definitions

"For the purpose of this subchapter—

"(1) 'employee' means any individual, other than the President and the Vice President, employed or holding office in—

"(A) an Executive agency other than the General Accounting Office; or

"(B) a position within the competitive service which is not in an Executive agency;

but does not include a member of the uniformed services;

"(2) 'candidate' means any individual who seeks nomination for election, or election, to any elective office, whether or not the individual is elected, and, for the purpose of this paragraph, an individual shall be considered to seek nomination for election, or election, to an elective office, if the individual has—

"(A) taken the action required to qualify for nomination for election, or election; or

"(B) received any political contribution (other than any personal services described in paragraph (3)(D)) or made any expenditure, or has given consent for any other person to receive any political contribution (other than any such personal services) or make any expenditure, with a view to bringing about the individual's nomination for election, or election, to that office;

"(3) 'political contribution'—

"(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

"(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

"(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

"(D) includes the provision of personal services for any political purpose;

"(4) 'superior' means any employee who exercises supervision of, or control or administrative direction over, another employee;

"(5) 'elective office' means any elective public office and any elective office of any political party or affiliated organization;

"(6) 'person' includes any individual, corporation, trust, association, any State, local, or foreign government, any territory or possession of the United States, or any agency or instrumentality of any of the foregoing; and

"(7) 'Special Counsel' means the Special Counsel of the Merit Systems Protection Board, appointed under section 1204 of this title.

"§ 7323. Use of official influence or official information; prohibition

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of—

"(1) interfering with or affecting the result of any election; or

"(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

"(A) any individual for the purpose of interfering with the right of any individual to vote as the individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

"(B) any person to give or withhold any political contribution; or

"(C) any person to engage, or not to engage, in any form of political activity.

"(b) An employee may not directly or indirectly use or attempt to use, or permit the use of, any official information obtained through or in connection with his employment for any political purpose, unless the official information is available to the general public.

"(c) For the purpose of subsection (a) of this section, 'use of official authority or influence' includes—

"(1) promising to confer or conferring any benefit (such as any compensation, grant, contract, license, or ruling) or effecting or threatening to effect any reprisal (such as deprivation of any compensation, grant, contract, license, or ruling); or

"(2) taking, directing others to take, recommending, processing, or approving any personnel action.

"(d) Nothing in this section shall be considered to apply with respect to any actions if, or to the extent that, such actions are taken in order to carry out the duties and responsibilities of one's position.

"§ 7324. Solicitation; prohibition

"(a) An employee may not—

"(1) give or offer to give a political contribution to any individual either to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(3) knowingly give or hand over a political contribution to a superior of the employee; or

"(4) knowingly solicit, accept, or receive, or be in any manner concerned with soliciting, accepting, or receiving, a political contribution—

"(A) from another employee (or a member of another employee's immediate family) with respect to whom the employee is a superior; or

"(B) in any room or building occupied in the discharge of official duties by—

"(i) an individual employed or holding office in the Government of the United States; or

"(ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

"(b)(1) In addition to the prohibitions of subsection (a) of this section, an employee may not knowingly solicit, accept, or receive a political contribution from, or give a political contribution to, any person who—

"(A) has, or is seeking to obtain, contractual or other business or financial relations with the agency in which the employee is employed;

"(B) conducts operations or activities which are regulated by that agency; or

"(C) has interests which may be substantially affected by the performance or nonperformance of the employee's official duties.

"(2) The Special Counsel shall prescribe regulations which exempt an employee from the application of paragraph (1) of this subsection with respect to any political contribution to or from an individual who has a familial or personal relationship with the employee if the employee complies with such requirements as the Special Counsel shall so prescribe which relate to the disqualification of the employee from engaging in any official activity involving the individual.

"(3) The Special Counsel shall prescribe regulations under which paragraph (1) of this subsection shall not apply with respect to any political contribution from a person in situations in which the facts and circumstances indicate there would not be any adverse effect on the integrity of the Government or the public's confidence in the integrity of the Government.

"§ 7325. Political activities on duty, etc.; prohibition

"(a) An employee may not engage in political activity—

"(1) while the employee is on duty;

"(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

"(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

"(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

"(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

"(2) Paragraph (1) applies to an employee—

"(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

"(B) who is—

"(i) an employee paid from an appropriation for the Executive Office of the President; or

"(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws.

"§ 7326. Candidates for elective office; leave

"(a) Except as provided in subsection (c) of this section, an employee who is a candidate shall, upon the request of the employee, be granted leave without pay for the purpose of allowing the employee to engage in activities relating to that candidacy.

"(b) Notwithstanding section 6302(d) of this title, and except as provided in subsection (c) of this section, an employee who is a candidate shall, upon the request of the employee, be granted accrued annual leave for the purpose of allowing the employee to engage in activities relating to that candidacy. Leave under this subsection shall be in addition to leave without pay to which the employee may be entitled under subsection (a) of this section.

"(c) A request for leave submitted under subsection (a) or (b) of this section may be denied if the exigencies of the public business so require. Any such denial shall be in writing and shall be accompanied by a statement of the reasons why the request is being denied.

"(d) An employee may not be required to take leave without pay under subsection (a), or accrued annual leave under subsection (b), in order to be a candidate, unless the activities relating to the candidacy interfere with the employee's performance of the duties of the position.

"§ 7327. Regulations

"The Special Counsel shall prescribe any rules and regulations necessary to carry out this subchapter.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 3302(2) of title 5, United States Code, is amended by striking out "7203, 7321, and 7322" and inserting in lieu thereof "and 7203".

(2)(A) Sections 8332(k)(1), 8706(c), and 8906(e)(2) of title 5, United States Code, are each amended by inserting immediately after "who enters on" the following: "leave without pay granted under section 7326(a) of this title, or who enters on".

(B) Section 8411(e) of title 5, United States Code, is amended by inserting immediately before "approved leave without pay" the following: "leave without pay granted under section 7326(a) of this title, or".

(3) The section analysis for subchapter III of chapter 73 of title 5, United States Code, is amended to read as follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"7321. Political participation.
"7322. Definitions.
"7323. Use of official influence or official information; prohibition.
"7324. Solicitation; prohibition.
"7325. Political activities on duty, etc.; prohibition.
"7326. Candidates for elective office; leave.
"7327. Regulations.".

(c) AMENDMENTS TO TITLE 18.—(1) Section 602 of title 18, United States Code, relating to solicitation of political contributions, is amended—

(A) by inserting "(a)" before "It";

(B) by striking out all that follows "Treasury of the United States" and inserting in lieu thereof a semicolon and the following:

"to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both."; and

(C) by adding at the end thereof the following new subsection:

"(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7323 or 7324 of that title.".

(2) Section 603 of title 18, United States Code, relating to making political contributions, is amended by adding at the end thereof the following new subsection:

"(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7324 of that title.".

(d) AMENDMENTS TO THE VOTING RIGHTS ACT OF 1965.—Section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d) is amended by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity" and by inserting in lieu thereof "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

(e) APPLICABILITY TO POSTAL EMPLOYEES.—

(1) IN GENERAL.—The amendments made by this section, and any regulations thereunder, shall apply with respect to employees of the United States Postal Service and the Postal Rate Commission, pursuant to sections 410(b) and 3604(e) of title 39, United States Code.

(2) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—The Special Counsel of the Merit Systems Protection Board may conduct investigations and seek disciplinary action with respect to any employee referred to in paragraph (1) in accordance with applicable provisions of chapter 12 of title 5, United States Code.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect 120 days after the date of the enactment of this Act, except that the authority to prescribe regulations granted under section 7327 of title 5, United States Code (as added by section 2 of this Act), shall take effect on the date of the enactment of this Act.

(b) PENALTIES NOT AFFECTED.—Any repeal or amendment made by this Act of any provision of law shall not release or extinguish any penalty, forfeiture, or liability incurred under that provision, and that provision shall be treated as remaining in force for the purpose of sustaining any proper proceeding or action for the enforcement of that penalty, forfeiture, or liability.

(c) PENDING PROCEEDINGS NOT AFFECTED.—No provision of this Act shall affect any proceedings with respect to which the charges were filed on or before the effective date of the amendments made by this Act. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

Passed the House of Representatives November 17, 1987.

Attest: DONNALD K. ANDERSON,
Clerk.

PARTIAL SUMMARY OF CURRENT CRIMINAL LAW ON COERCION

a. 18 U.S.C. Sec. 594 prohibits the attempt or use of intimidation, threat, or coercion for the purpose of interfering with another's right to vote. A person in violation of this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

b. 18 U.S.C. Sec. 595 prohibits any person employed by the federal government in an administrative capacity from using his official authority for the purpose of interfering with, or affecting, the nomination or election of certain candidates for national office. Violators are subject to a fine of not more than $1,000 or one year in prison, or both.

c. 18 U.S.C. Sec. 597 prohibits the making, offering, solicitation, acceptance or receipt of expenditures in consideration for one's vote or the withholding thereof. Violation of this section carries a fine of not more than $1,000 or maximum imprisonment of one year, or both. If the violation is willful, a fine of not more than $10,000 and imprisonment of not more than two years, or both, shall be assessed.

d. 18 U.S.C. Sec. 598 prohibits the use of Congressional appropriations for work relief, or the exercise of authority conferred by an appropriations act, for the purpose of interfering with an individual's right to vote. Violation of this section warrants a fine of not more than $1,000 or imprisonment for not more than one year, or both.

e. 18 U.S.C. Sec. 599 prohibits a candidate from the direct or indirect promise or pledge, or the use of his influence, of the appointment of any person for the purpose of procuring support for his candidacy. Violators shall be fined not more than $1,000 or imprisoned not more than one year, or both. Willful violation carries a maximum fine of $10,000 or two years in prison, or both.

f. 18 U.S.C. Sec. 600 prohibits promise or special consideration for employment, position, compensation, contract, appointment or other benefit made possible by an Act of Congress to any person in return for any political activity, or the support of a candidate or political party. Violators of this section shall be fined not more than $10,000 or imprisoned not more than one year, or both.

g. 18 U.S.C. Sec. 601 prohibits causing any person to make a contribution for the benefit of any candidate or political party through the denial of deprivation of any employment, position, or work with an agency of the federal government. A maximum fine of $10,000 or imprisonment of not more than one year, or both, shall be levied against violators.

h. 18 U.S.C. Sec. 603 prohibits any officer or employee of the United States from making any contribution to any other officer, employee, Senator or Representative, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Violators are subject to a fine of not more than $5,000 or three years in prison, or both.

i. 18 U.S.C. Sec. 604 prohibits solicitation or receipt of any assessment, subscription or contribution for any political purpose, from any person known to be receiving or entitled to compensation, employment or benefit generated by Congressional appropriation for work relief purposes. Violators shall be fined not more than $1,000 or imprisoned not more than one year, or both.

j. 18 U.S.C. Sec. 605 prohibits the disclosure, for political purposes, of the names of persons on relief, to a political candidate, committee, or campaign manager, or the receipt of such a list. Violators shall be fined not more than $1,000 or imprisoned not more than one year, or both.

k. 18 U.S.C. Sec. 606 prohibits officers or employees of the United States from discharging, promoting, or degrading the rank of any other officer or employee for giving, withholding, or neglecting to make a political contribution. Violators shall be fined not more than $5.000 or imprisoned not more than three years, or both.

Statement of
Senator DENNIS DeCONCINI
before the
Senate Governmental Affairs Committee
on
H.R. 3400
February 23, 1988

Mr. Chairman: I appreciate being afforded the opportunity to testify today in support of H.R. 3400, the Hatch Act reform legislation which was passed by the House of Representatives on November 17, 1987 by a vote of 305 to 112. I ask unanimous consent that the full text of remarks will be included in the hearing record as if spoken.

I congratulate you, Mr. Chairman, for holding these informational hearings on an issue which is so important to this nation's nearly three million Federal and postal employees. I would also like to take the opportunity to note your leadership on this issue, as well as that of the Ranking Member, Senator Roth, and the chairman and ranking member of the Subcommittee on Federal Services, Post Office and Civil Service, Senators Pryor and Stevens.

I would be remiss, however, if I did not pay special attention to the fine work and leadership of my colleagues from the other body who have testified today. Representative Clay has been out front on this issue for many years and is to be commended for his perseverance in working for all Federal employees. Finally, we might not be here today if it were not for the insight and diligence of the ranking member on the House Post Office and Civil Service Committee, Representative Taylor.

He will certainly be missed by the this country's Federal workers when he retires from the House of Representatives at the conlusion of the 100th Congress.

Mr. Chairman, today the Senate begins addressing the question of Hatch Act reform. The legislation which so overwhelmingly passed the House is not revolutionary by any stretch of the imagination. It does not "repeal" the Hatch Act, as many of its critics would have the citizens of this country believe. Instead, it clarifies and strengthens a law which has confused and befuddled Federal employees for nearly fifty years.

If I may, I would like to briefly trace the history of this law as it has evolved over the years. When the Hatch Act was passed by the Congress in 1939, the country was in the depths of the greatest economic calamity in its history. Political demagogues abounded and many were fearful that a powerful and popular president would take the unprecedented step of running for a third term. They feared an army of Federal workers, the majority of whom owed their employment to various New Deal projects, would become mobilized in the re-election efforts of this president. Such a campaign force, funded by taxpayers' dollars, would be a formidable one.

There had been numerous instances of cronyism and favoritism in the awarding of Federal contracts in this period. Many Federal workers believed that they owed their jobs to the party and president in power and felt - rightly or wrongly - that pressure would be brought to bear on them to support this party in order to retain their jobs.

Knowing of the excesses of the Roosevelt years, these fears were not unreasonable. While the principle of "merit" had been codified in the Pendleton Act of 1883 and subsequent civil service legislation, the expansion of the Federal work force in the '30s had renewed fears of political coercion and a lack of neutrality in executing the laws of the land. Many jobs were not apportioned on the basis of merit, and escaped the scrupulous notice of the civil service examiners.

Today, however, these fears are largely unfounded and unreasonable. Nearly 80% of all Federal civilian jobs are covered by the impartial system of merit and examination. Recent figures on the make-up of the Federal workforce show that the education level achieved by government workers is at an all time high, with nearly one-third possessing at least a bachelor's degree. This is a vast improvement over workers of just one decade ago.

While the original premise for passage of the Hatch Act was to protect the Federal worker from political coercion, today it is viewed by many as a bureaucratic jumble of conflicting and confusing regulations which have the effect of freezing Federal and postal employees from even exercising the few poltical rights which they are guaranteed.

I cannot blame them for opting out of a system which says that you cannot pass out buttons for a political candidate, but you can wear one. That says you can sign a nominating petition, but you cannot circulate a petition yourself. That you can register to vote and even assist in voter registration drives, but cannot work to register voters for one party only. A system that says you are free to attend a political rally, but not allowed to carry a banner or sign.

This confusion is compounded and the purpose of the law itself belittled, when - in the name of the Hatch Act - regulations are implemented stating that a Federal employee can write to the editor of his or her local newspaper expressing an opinion on a partisan issue, but that he or she is in violation of the Act if copies of the letter are sent to five or more papers, or even if that Federal employee writes five letters on the same subject to one newspaper. Even more ridiculous are regulations stating that a political campaign sign no larger than 15 inches by 30 inches can be placed on an individual's car, and that lawn signs for a candidate can be no larger than 14 by 22 inches. These trivial regulations render the Hatch Act ludicrous.

Mr. Chairman, I learned last week of a postmaster in my state of Arizona who has to spend part of his time patrolling a postman under his supervision. It appears that this postman has a relative who is a county sheriff and another relative who is a judge. Understandably, in his off-duty time, the postman wants to help them get re-elected. But, because of the Hatch Act, this man's supervisor must spend part of his time -- time that is better spent on making certain the mail is delivered on a timely basis -- ensuring that his employee does not run afoul of the Hatch Act. This postmaster, like so many Federal and postal employees in my state, wants me to do what I can to see that this out-dated law is changed.

The bill that is before us is a good, solid, bipartisan piece of legislation. It simply allows Federal employees to voluntarily exercise their First Amendment rights and engage in poltical activities on their own time. The two key ideas here are "voluntarily" and "their own time." This nation's Federal employees are intelligent enough to know if they are being buffaloed. They will not allow themselves to be forced into campaigning for someone or contributing to a campaign when they do not want to. They work hard during the day and will not allow someone else to tell them how they should spend their leisure time.

Similarly, the Federal employees of this nation know the rules and regulations which govern their activities. I know this because they tell me loudly and clearly when Congress is tampering with their benefits or trying to change their retirement. Under a reformed Hatch Act, they would know if someone was trying to coerce them into giving to a particular candidate or engaging in political activity on the job. They would know it and they would report the offending individual to their supervisor or the proper authorities. They would not let someone else do something to spoil one of their hard-earned benefits or make life difficult for themselves and their peers.

These specific prohibitions make a reformed Hatch Act self-policing. Instead of opting out of the political process entirely, for fear of breaking the law, something many have done, a simplified Hatch Act would provide postal and Federal employees the opportunity to make their concerns known to their elected representatives - if they choose to do so.

The fact that the vast majority of civil service jobs fall under the merit system should reduce the fears of some that a large body of workers can be mobilized to work for a particular individual or party. As a matter of fact, it has been this

Administration which has chosen not to comply with the courts on the issue of formulating full and fair civil service examinations for employment applicants. According to the Office of Personnel Management, about 40% of the people hired in recent years have been hired under "Schedule B" temporary hiring authority. This amounted to an estimated 4,000 people hired within the past year without the benefit of competitve examination. So I find it strange that this Administration has been so loud in voicing its fears of a "politicized" system under a reformed Hatch Act when it has benefitted from this loophole in the civil service system.

Also, this legislation provides stronger penalties for violations of the reformed Hatch Act. As stated in the report accompanying H.R. 3400, it was determined that "the disciplinary provisions in 5 U.S.C. 1207 should apply to prosecutions brought under H.R. 3400 and that the list of available penalties under the section should apply to violations of this Act as well. Possible penalties include fines, debarment from employment, removal, and reprimand." I have long believed that clearly defined penalties for violating a law are a good deterent against breaking that law.

Finally, the legislation touches upon an issue which has been of particular interest to me. In the interests of a government which speaks with one voice beyond the nation's borders, this legislation prohibits political appointees serving overseas - including ambassadors - from engaging in any on-the-job political activity. Whether an ambassador is appointed from the ranks of the Foreign Service or the private sector, his or her full-time job remains one of representing the interests of the United States in other nations. This coverage is consistent with the provisions of H.R. 1777 as passed by the House.

Thus, the bill before us today is a good bill. It clarifies the distinction between what "on" and "off-duty" activities are allowed. It specifies the penalties for violations of the Act. It strengthens the merit system and enhances the self-policing aspects inherent in the bill. It enhances the foreign policy of this nation. And it improves the American poltical process by allowing one of the most intelligent segments of this country access to the political system.

In 1974, Congress lifted most of the restrictions on political activity by State and local government employees. Since that time, many states have further loosened the restrictions on partisan political activity. In my state of Arizona, while certain restrictions remain, the statutes do not deny employees or board members the civil or political liberties guaranteed by the U.S. and Arizona Constitutions.

While I have long favored reform of the Hatch Act and strongly support the legislation before us today, I would briefly highlight and urge this Committee to carefully examine a few areas of the bill which I believe could be further clarified and might gain additional support for the legislation.

Some concern has been raised about "un-Hatching" Federal employees in certain sensitive positions. It has been argued that employees of the Federal Election Commission and the Internal Revenue Service, as well as those employees directly responsible for government grants and contracts, among others, may be susceptible to coercion and "implicit" threats. I do not doubt the loyalty of any Federal employee to their government. It is wise, however, to do all that we can to avoid even the appearance of impropriety to the public.

Also, I believe that the Governmental Affairs Committee might consider establishing a clear and concise definition of the term "political activities" so that the intent of Congress is not left to other groups to decipher.

Similarly, the Committee might review the enforcement provisions for violations of the Act to ensure they act as a forceful deterent to the possible wrongdoer.

Finally, as I alluded to earlier in my testimony, the merit system could be tightened to cover the greatest number of Federal positions possible. The slipshod manner in which the Reagan Administration has hired so many employees must be avoided when possible by this and future Administrations.

Attention to these few details could serve to strengthen the Hatch Act reform legislation now before the Committee and enhance its palatability to those who may have qualms about it.

In conclusion, Mr. Chairman, I would urge my colleagues in the Senate to stop treating America's Federal and postal employees as "second class" citizens and to embrace this Hatch Act reform legislation. On balance, it is good, bipartisan legislation which would restore long denied First Amendment rights to a group which serves this nation daily. To those who fear that Hatch Act reform may bring coercion, I would argue that coercion takes many forms and is undoubtedly present today under this ill-defined and arbitrary law. Let us be for good government, fair government, and equitable government. Let us reform the Hatch Act and send a message to this nation's employees that we value the work they perform daily.

TESTIMONY OF HONORABLE GENE TAYLOR
TO
UNITED STATES SENATE
COMMITTEE ON GOVERNMENTAL AFFAIRS
FEBRUARY 23, 1988

I AM EXTREMELY PLEASED TO BE HERE TODAY, SENATOR PRYOR, TO PRESENT MY VIEWS ON HATCH ACT REFORM. I KNOW YOU HAVE PLAYED A LEAD ROLE IN SCHEDULING THESE IMPORTANT HEARINGS. IT IS PARTICULARLY APPROPRIATE IN THE YEAR WE CELEBRATE THE BICENTENNIAL OF OUR CONSTITUTION WE EXTEND THOSE RIGHTS AND PRIVILEGES AS GUARANTEED BY THAT DOCUMENT TO THE MEN AND WOMEN WHO CARRY OUT OUR NATION'S ENDEAVORS.

MR. CHAIRMAN, THIS IS NOT THE FIRST TIME CONGRESS HAS STUDIED THE ISSUE OF HATCH ACT REFORM. IN ENACTING THE LEGISLATION ALMOST 50 YEARS AGO, CONGRESS SOUGHT TO PROTECT EMPLOYEES AND THE PUBLIC ALIKE FROM THE PERNICIOUS EFFECTS OF UNDUE PARTISAN INFLUENCES. THE STRONG ARM TACTICS OF POLITICAL BOSSES IN COERCING FEDERAL RELIEF WORKERS TO CONTRIBUTE TO PARTISAN CAMPAIGNS PROMPTED THE CONGRESS TO PASS LEGISLATION BANNING PARTISAN POLITICAL ACTIVITIES ON THE PART OF FEDERAL AND POSTAL EMPLOYEES. TWELVE YEARS AGO THE HOUSE AND SENATE PASSED LEGISLATION REPEALING MAJOR PROVISIONS OF THE HATCH ACT ONLY TO SEE THESE EFFORTS FALL SHORT DUE TO A PRESIDENTIAL VETO. TWO YEARS LATER, THE HOUSE PASSED SIMILAR LEGISLATION ONLY TO SEE IT DIE IN THIS BODY FOR LACK OF BIPARTISAN SUPPORT.

TODAY, MR. CHAIRMAN, WE HAVE A DIFFERENT SITUATION. H.R. 3400 IS THE PRODUCT OF BIPARTISAN WORK AND COOPERATION. IT ENJOYED STRONG BIPARTISAN SUPPORT IN PASSING THE HOUSE WITH 305 VOTES. WHILE COMING FROM DIFFERENT AND OFTEN OPPOSING PERSPECTIVES, THE PROPONENTS OF THIS BILL HAMMERED OUT A THOUGHTFUL, FAIR AND PRACTICAL SOLUTION TO THE ISSUES RAISED BY HATCH ACT REFORM. WE WANTED TO ENSURE THE NONPARTISAN ADMINISTRATION OF GOVERNMENT WHILE RECOGNIZING AN EMPLOYEE'S FIRST AMENDMENT RIGHT TO PARTICIPATE IN THE POLITICAL PROCESS. WE SOUGHT A LEGISLATIVE PRODUCT WHICH CONTAINED STRONG PROHIBITIONS AGAINST COERCION AND MISUSE OF OFFICIAL AUTHORITY OR INFLUENCE. WE RECOGNIZE THAT THE POSTAL AND FEDERAL WORK FORCES OF TODAY BEAR LITTLE RESEMBLANCE TO THEIR PREDECESSORS OF THE DEPRESSION ERA. BUT OF THE HIGHEST PRIORITY WAS DRAFTING A BILL WHICH SPELLED OUT IN SIMPLE AND STRAIGHT FORWARD TERMS WHAT A FEDERAL EMPLOYEE OR POSTAL WORKER COULD OR COULD NOT DO IN THE POLITICAL ARENA. I STRONGLY BELIEVE H.R. 3400 EMBODIES THESE GOALS.

ONE OF MY STRONGEST CRITICISMS OF THE PRESENT LAW IS ITS AMBIGUITY AND VAGUENESS. PLAINLY SAID, FEDERAL AND POSTAL EMPLOYEES DON'T KNOW WHAT THEY CAN OR CANNOT DO. THE PRESENT LAW PROHIBITS EMPLOYEES FROM ENGAGING IN PARTISAN POLITICAL ACTIVITIES. THE ACT THEN FURTHER DEFINES THIS TERM BY INCORPORATING INTO THE LAW MORE THAN 3,000 ADMINISTRATIVE RULINGS AND DECISIONS RENDERED PRIOR TO 1940. IN FACT, A COMPILATION OF THESE CONFLICTING, OUTDATED AND

OFTEN ARBITRARY DECISIONS WAS NOT EVEN AVAILABLE UNTIL THE LATE 1970S. ALTHOUGH THE LAW HAS WITHSTOOD CONSTITUTIONAL CHALLENGES IN THE COURTS, IT IS HIGH TIME THAT CONGRESS CLARIFY AND DEFINE THE PERMISSIBLE DIMENSIONS OF EMPLOYEE POLITICAL PARTICIPATION.

H.R. 3400 REMOVES THE CONFUSION ASSOCIATED WITH THE CURRENT HATCH ACT BY APPLYING A FAIR AND SIMPLE PRINCIPLE. FEDERAL EMPLOYEES WOULD BE PERMITTED TO PARTICIPATE IN PARTISAN ACTIVITIES ONLY ON THEIR OWN TIME AND NOT WHILE ON THE JOB. OFF THE JOB, FEDERAL AND POSTAL EMPLOYEES WOULD BE ALLOWED TO EXERCISE THE FULL RIGHTS OF AMERICAN CITIZENSHIP. THIS IS THE SAME PRINCIPLE WHICH GOVERNS PUBLIC WORKERS IN 41 STATES. THE BILL CONTAINS STRONG PROHIBITIONS AGAINST COERCION AND THE MISUSE OF OFFICIAL AUTHORITY TO INFLUENCE THE POLITICAL PROCESS. EMPLOYEES ARE FORBIDDEN FROM USING THEIR OFFICIAL STATUS FOR PARTISAN POLITICAL GAIN. EMPLOYEES MAY NOT USE OFFICIAL INFORMATION OBTAINED BY VIRTUE OF THEIR POSITION FOR PARTISAN PURPOSES UNLESS SUCH INFORMATION IS READILY AVAILABLE TO THE GENERAL PUBLIC. SOLICITATIONS OF SUBORDINATES OR WHILE ON DUTY OR ON FEDERAL PROPERTY ARE PROHIBITED. IN ALL, H.R. 3400 ATTEMPTS TO STRIKE A DELICATE BALANCE BETWEEN THE FIRST AMENDMENT RIGHTS OF FEDERAL AND POSTAL EMPLOYEES WITH THE PUBLIC'S INTEREST IN AN EFFICIENTLY RUN FEDERAL BUREAUCRACY FREE OF UNDUE POLITICAL INFLUENCES.

OPPONENTS OF HATCH ACT REFORM SEEM TO THINK THAT THE PRESENT LAW OPERATES JUST FINE. THEY DISMISS ARGUMENTS OF STATUTORY VAGUENESS AND AMBIGUITY AS FAILURE ON THE EMPLOYEES PART TO REQUEST A WRITTEN ADVISORY OPINION FROM THE OFFICE OF SPECIAL COUNSEL. WHAT IS INTERESTING TO NOTE IS THAT WHEN MY OFFICE RECEIVES SUCH QUESTIONS REGARDING PERMISSIBLE POLITICAL ACTIVITIES, THE OFFICE OF SPECIAL COUNSEL REQUESTED THAT ALL SUCH INQUIRIES BE DIRECTED TO THEM BECAUSE OF THE INTRICACIES OF THE STATUTE. NOW, WHEN THE ENFORCING AGENCY TELLS CONGRESS THE PRESENT STATUTE IS COMPLICATED, CAN YOU IMAGINE WHAT THE RANK AND FILE POSTAL AND FEDERAL WORKER MUST THINK?

OTHER OPPONENTS OF HATCH ACT REFORM ARGUE THAT H.R. 3400 REPEALS ALL THE PROHIBITIONS AGAINST PARTISAN POLITICAL ACTIVITY NOW CONTAINED IN THE HATCH ACT. THIS ARGUMENT IS SIMPLY INCORRECT AND IGNORES THE FACT THAT H.R. 3400 WOULD CLEAR UP THE EXISTING AMBIGUITIES IN THE PRESENT LAW BY ELIMINATING AND PROHIBITING ALL ON-THE-JOB POLITICAL ACTIVITIES INSTEAD OF CONTINUING THE CURRENT PATCHWORK OF REGULATIONS. IN ADDITION, THE LEGISLATION RETAINED THE CURRENT PROHIBITIONS ON MISUSE OF OFFICIAL AUTHORITY AND INFLUENCE WHILE FOCUSING ITS REFORM EFFORTS ON THE BAN AGINST PARTICIPATION IN THE POLITICAL PROCESS.

OTHERS HAVE VOICED OBJECTIONS TO ANY HATCH ACT REFORM BASED ON THEIR LEGITIMATE CONCERNS REGARDING PROTECTIONS AGAINST COERCION AND UNDUE INFLUENCE. UNDER PRESENT LAW, VIOLATIONS ARE "PROSECUTED" UNDER ADMINISTRATIVE PROCEDURES. THE HARSHEST SENTENCE THE MERIT

SYSTEMS PROTECTION BOARD CAN HAND DOWN IS REMOVAL FROM ONE'S POSITION. UNTOUCHED BY H.R. 3400 IS THE WIDE RANGE OF CRIMINAL STATUTES CONCERNING COERCION, INTIMIDATION OR OTHERWISE INTERFERING WITH ANOTHER'S RIGHT TO VOTE. PUNISHMENT FOR VIOLATIONS OF THESE FEDERAL CRIMINAL STATUTES RANGES IN SCOPE FROM IMPRISONMENT OF UP TO ONE YEAR COUPLED WITH A FINE NOT EXCEEDING $1,000 TO A MAXIMUM OF FIVE YEARS IN PRISON WITH A FINE NOT EXCEEDING $10,000. PERSONALLY, I BELIEVE THAT OUR FEDERAL AND POSTAL WORK FORCE IS COMPRISED OF LAW-ABIDING AND UPSTANDING CITIZENS. HOWEVER, I WOULD IMAGINE THAT STIFF PENALTIES SUCH AS THESE WOULD SERVE TO DETER ANY ORGANIZATIONAL OR INDIVIDUAL COERCION TO A MUCH GREATER DEGREE THAN THE ADMINISTRATIVE PENALTIES CONTAINED UNDER THE PRESENT ACT.

IN GENERAL, OPPONENTS OF HATCH ACT REFORM ARGUE THAT ANY CHANGE IN THE CURRENT LAW WILL COMPROMISE THE MERIT SYSTEM AS WE NOW KNOW IT AND SERVE TO HIGHLY POLITICIZE THIS NATION'S WORK FORCE. MR. CHAIRMAN, I HAVE SERVED AS THE RANKING REPUBLICAN ON THE HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE FOR SEVERAL YEARS. I HAVE ENJOYED THE OPPORTUNITY OF BECOMING PERSONALLY ACQUAINTED WITH NUMEROUS POSTAL AND FEDERAL EMPLOYEES. I KNOW THEM TO BE HONEST, HARDWORKING, KNOWLEDGEABLE AND ARTICULATE CITIZENS. REFORMING THE HATCH ACT WILL IN NO WAY IMPAIR THE EFFECTIVENESS OR IMPARTIALITY OF GOVERNMENT. PROTECTIONS PROVIDED FOR UNDER THE MERIT SYSTEM WILL NOT ONLY REMAIN INTACT BUT WILL BE STRENGTHENED. ALLEGATIONS OF POLITICIZING THE

GOVERNMENT WORK FORCE ARE UNFOUNDED AND UNREALISTIC. THE INTEGRITY OF THE MEN AND WOMEN WORKING IN THE FEDERAL SYSTEM SHOULD NOT BE COMPROMISED OR DISPARAGED BY INNUENDO OR INSINUATION.

FEDERAL AND POSTAL EMPLOYEES HAVE A RIGHT TO PARTICIPATE IN THE POLITICAL PROCESS. DENIED THIS PRIVILEGE TO PARTICIPATE BOTH FEDERAL EMPLOYEES AND THE PUBLIC AT LARGE ARE DENIED THE RIGHT TO A FAIR DISCUSSION OF THE ISSUES AFFECTING THIS COUNTRY. MR. CHAIRMAN, POSTAL AND FEDERAL EMPLOYEES CARE DEEPLY ABOUT THE FUTURE OF THIS COUNTRY, ABOUT OUR EDUCATION, ABOUT OUR DEFENSE, ABOUT FISCAL RESPONSIBILITY. THEY WANT ONLY THE BEST FOR THIS COUNTRY, THE SAME AS YOU OR I. THEY HAVE A RIGHT TO PARTICIPATE, AND I HOPE YOUR COMMITTEE AND INDEED THIS BODY WILL FAVORABLY REVIEW THE HATCH ACT REFORM INITIATIVES YOU HAVE BEFORE YOU TODAY.

STATEMENT OF THE HONORABLE FRANK HORTON

Mr. Chairman, I appreciate the opportunity to testify before your subcommittee today. I know you have a number of witnesses, so I will be brief with my remarks.

The Federal Employees' Political Activities Act represents the legislative process at its best. The employee organizations represented here today along with the Majority and Minority members of the Post Office adn Civil Service Committee worked hard together to write a bill that would address the needs of federal and postal employees and be acceptable to a majority of the Members of the House. I commend Congressman Taylor and Congressman Clay for working out a compromise that the Committee passed unanimously. In fact, it passed the House by a 305 to 112 vote margin, which is over a two-thirds majority.

I do not need to tell you Mr. Chairman that this legislation is needed. badly. It is clear that federal employees are second-class citizens in this country. The strength of the House bill is that it provides clear-cut guidelines on political activity, unlike current law. Employees may not engage in any political activity while on the job. I commend the employee groups for compromising on this point. They had already won the right in court to wear political buttons on the job, and they are willing to give up this right to have political freedom off the job.

Those who argue that if we pass this bill we will end up with a politicized workforce in the federal government have simply not read the bill's provisions, or current law. The penalties are stiff and are more than sufficient to ensure the integrity of our civil servants.

The arguments against the bill tend to be extreme hypothetical situations that could happen but never will. I would prefer to focus on one very positive aspect of the bill. It would allow federal employees to be active in local politics. In many communities there are shortages of people willing to serve in municiple government. Yet, federal employees who are already involved in government service are prohibited from using their talent for their communities.

Most importantly, the bill would treat federal employees the same as other employees in the private sector who are prohibited from engaging in political activity when they are working, but are free to participate in the political process on their own time. The bill is a fair approach to correcting a wrong that has been done to our civil servants.

I thank the members of the Subcommittee for allowing me to testify today, and I urge you and the full Senate to pass this much-needed legislation.

STATEMENT OF
HONORABLE CONSTANCE HORNER, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

COMMITTEE ON GOVERNMENTAL AFFAIRS
of the
UNITED STATES SENATE

on

H.R. 3400
THE FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1987

FEBRUARY 23, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THANK YOU FOR INVITING ME TO PRESENT THE VIEWS OF THE OFFICE OF PERSONNEL MANAGEMENT ON H.R. 3400, THE "FEDERAL EMPLOYEES POLITICAL ACTIVITIES ACT OF 1987."

H.R. 3400 WOULD REPEAL SUBSTANTIAL PORTIONS OF THE HATCH ACT, WHICH PROHIBITS FEDERAL EMPLOYEES FROM ENGAGING IN CERTAIN PARTISAN POLITICAL ACTIVITIES. THIS BILL WOULD ALLOW FEDERAL EMPLOYEES TO RUN FOR PARTISAN POLITICAL OFFICE, HOLD OFFICE IN A POLITICAL PARTY, DISTRIBUTE CAMPAIGN LITERATURE AND SOLICIT VOTES, ORGANIZE AND LEAD POLITICAL MEETINGS, PUBLICLY ENDORSE CANDIDATES AND URGE OTHERS TO SUPPORT THEM, AND RAISE FUNDS FOR CAMPAIGNS AND PARTIES. EACH OF THESE ACTIVITIES WOULD BE LIMITED TO SOME DEGREE TO PREVENT ABUSE OF OFFICE OR CONFLICT OF INTEREST, BUT WE BELIEVE THOSE LIMITATIONS ARE UNENFORCEABLE AND INADEQUATE, AND COULD NOT BE MADE SUFFICIENT TO PROTECT EMPLOYEES FROM THE POTENTIAL FOR COERCION, IMPLICIT IN THE SITUATION REPEAL WOULD CREATE.

IN THE LEGISLATIVE DOCUMENTS WHICH ACCOMPANIED HIS STATE OF THE UNION MESSAGE, PRESIDENT REAGAN EXPRESSED HIS OPPOSITION TO THE PROPOSED HATCH ACT AMENDMENTS AS FOLLOWS:

> "WE DO NOT WANT TO RISK A SITUATION IN WHICH FEDERAL EMPLOYEES COME TO BELIEVE THAT THEIR ADVANCEMENT DEPENDS ON ESPOUSING PARTICULAR VIEWS, PERHAPS THE POLITICAL VIEWS OF THEIR SUPERIORS. NEITHER SHOULD ELECTORAL CAMPAIGNING BE ALLOWED TO MAR COOPERATION BETWEEN THE POLITICAL APPOINTEES OF THE PRESIDENT AND THE CIVIL SERVICE ESTABLISHMENT, A COOPERATION CRUCIAL TO GOOD GOVERNMENT. AS I HAVE SAID IN THE PAST, THE HATCH ACT SHOULD NOT BE CHANGED OR REPEALED."

PRESIDENT REAGAN'S STRONG OPPOSITION IS SHARED BY A BROAD SPECTRUM OF OTHER GROUPS SUCH AS COMMON CAUSE, THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, THE INTERNATIONAL PERSONNEL MANAGEMENT ASSOCIATION, THE U.S. CHAMBER OF COMMERCE, THE PUBLIC SERVICE RESEARCH COUNCIL, AND THE HERITAGE FOUNDATION.

ALSO, THE SENIOR EXECUTIVES ASSOCIATION, IN A POLL OF ITS MEMBERS, FOUND THAT 74 PERCENT OF THE SENIOR LEVEL FEDERAL EMPLOYEES WHO WERE POLLED WERE OPPOSED TO CHANGING THE HATCH ACT.

THE HATCH ACT WAS ENACTED IN THE 1930'S TO ADDRESS A VERY REAL PROBLEM OF THOSE TIMES--THE TENDENCY OF CORRUPT POLITICAL

APPOINTEES TO ADVANCE THEIR AGENDA BY EXERTING POLITICAL PRESSURE ON THEIR SUBORDINATES. BUT THE ROOTS OF THE HATCH ACT GO BACK TO THE EARLY DAYS OF THE REPUBLIC WHEN THOMAS JEFFERSON WAS DISTURBED BY THE POLITICAL ACTIVITIES OF SOME EXECUTIVE BRANCH OFFICERS. HE ISSUED AN ORDER ENJOINING THESE OFFICERS FROM INFLUENCING THE VOTES OF OTHERS OR PARTICIPATING IN ELECTIONEERING. HOWEVER, FOR A CENTURY THE POLITICAL "SPOILS SYSTEM" WAS THE PREVAILING PRACTICE, ALTHOUGH PERIODIC ATTEMPTS WERE MADE TO BRING IT UNDER CONTROL. MOST ATTEMPTS WERE UNSUCCESSFUL UNTIL THE PENDLETON ACT OF 1883, WHICH ESTABLISHED THE FEDERAL MERIT SYSTEM. PUBLIC ANTIPATHY TO THE "SPOILS SYSTEM" LED TO THE CREATION OF A CIVIL SERVICE FOUNDED ON PRINCIPLES OF MERIT, RATHER THAN POLITICAL AFFILIATION. A KEY PROVISION OF THE PENDLETON ACT WAS THE PROTECTION PROVIDED TO CIVIL SERVANTS FOR THE FIRST TIME FROM EFFORTS TO FORCE THEM TO GIVE POLITICAL SERVICE OR TRIBUTE. AS THEODORE ROOSEVELT SAID IN 1890, WHILE SERVING AS A MEMBER OF THE CIVIL SERVICE COMMISSION: "THE OFFICES MUST BE TAKEN OUT OF REACH OF ALL POLITICIANS, GOOD OR BAD, BY SOME PERMANENT SYSTEM OF LAW . . . . THE CIVIL SERVICE LAW ACCOMPLISHES THIS WHEREVER IT APPLIES AND IS ENFORCED; AND IN CONSEQUENCE THE GOVERNMENT EMPLOYEES PROTECTED BY IT . . . ARE NOW WITHDRAWN FROM THE DEGRADING INFLUENCES OF THE SPOILS SYSTEM."

HOWEVER, ROOSEVELT CAME TO REALIZE THAT THE PROTECTIONS OF THE PENDLETON ACT WERE INSUFFICIENT IN A POLITICAL ENVIRONMENT, AND AS PRESIDENT OF THE UNITED STATES HE SIGNED THE EXECUTIVE

ORDER AMENDING "CIVIL SERVICE RULE I" TO REGULATE PARTISAN POLITICAL ACTIVITIES BY EMPLOYEES IN THE MERIT SYSTEM. THE HATCH ACT INCORPORATED RULE I, AND ALSO EXTENDED ITS RESTRICTIONS TO EXCEPTED SERVICE EMPLOYEES AND PROVIDED A STATUTORY BASIS FOR THE RESTRICTIONS. AS SUCH, THE HATCH ACT REPRESENTED NOT A BREAK FROM THE PAST, BUT A NATURAL EVOLUTION FROM THE POLICIES BEGUN BY THE PENDLETON ACT AND THEODORE ROOSEVELT TO CREATE A CIVIL SERVICE FREE FROM POLITICAL COERCION AND CORRUPTION. THE HATCH ACT HAS WORKED WELL FOR A HALF CENTURY, THROUGH BOTH DEMOCRATIC AND REPUBLICAN ADMINISTRATIONS, TO PROTECT FEDERAL EMPLOYEES FROM POLITICAL COERCION AND TO BUILD THE AMERICAN PUBLIC'S CONFIDENCE IN THE INTEGRITY OF THE CAREER CIVIL SERVICE. AT THE SAME TIME, IT HAS EFFECTIVELY PROTECTED THE RIGHT OF FEDERAL EMPLOYEES TO HOLD AND EXPRESS THEIR OWN POLITICAL OPINIONS, AND TO PARTICIPATE IN POLITICS OF NONPARTISAN NATURE.

OVER TIME, THE VERY EFFECTIVENESS OF THE HATCH ACT HAS CAUSED MANY TO LOSE SIGHT OF ITS PRIMARY PURPOSE OF PROTECTING THE INTERESTS OF BOTH EMPLOYEES AND THE PUBLIC. ATTENTION HAS INCREASINGLY SHIFTED AWAY FROM THE PROTECTIONS PROVIDED BY THE ACT TO THE PROVISIONS THAT ARE NOW BEING RECAST AS BURDENSOME RESTRICTIONS ON FEDERAL EMPLOYEES' POLITICAL ACTIVITY.

SUPPORTERS OF H.R. 3400 CLAIM THAT THE HATCH ACT HAS MADE FEDERAL EMPLOYEES SECOND-CLASS CITIZENS, DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS. FEDERAL EMPLOYEES ARE NOT SECOND-CLASS

CITIZENS. THEY ARE FREE TO PLAY AN IMPORTANT ROLE IN THE DEMOCRATIC PROCESS. THEY MAY REGISTER AND VOTE; CONTRIBUTE MONEY AND ATTEND FUND-RAISING EVENTS; BELONG TO POLITICAL PARTIES AND CLUBS; AND FULLY EXPRESS THEIR PERSONAL POLITICAL OPINIONS. THE HATCH ACT'S RESTRICTIONS HAVE BEEN HELD TO BE CONSTITUTIONAL BY THE SUPREME COURT.

FURTHER, THE SUPREME COURT HAS NOT ONLY FOUND THE ACT TO BE CONSTITUTIONAL, BUT HAS PLACED ITS STAMP OF APPROVAL ON THE REGULATIONS WHICH IMPLEMENT THE ACT. THE COURT IN ITS 1972 DECISION REFERRED TO THE REGULATIONS AS FOLLOWS:

> "THERE MIGHT BE QUIBBLES ABOUT THE MEANING OF TAKING AN 'ACTIVE PART IN MANAGING' OR ABOUT 'ACTIVELY PARTICIPATING IN . . . FUND-RAISING' OR ABOUT THE MEANING OF BECOMING A 'PARTISAN' CANDIDATE FOR OFFICE; BUT THERE ARE LIMITATIONS IN THE ENGLISH LANGUAGE WITH RESPECT TO BEING BOTH SPECIFIC AND MANAGEABLY BRIEF, AND IT SEEMS TO US THAT ALTHOUGH THE PROHIBITIONS MAY NOT SATISFY THOSE INTENT ON FINDING FAULT AT ANY COST, THEY ARE SET OUT IN TERMS THAT THE ORDINARY PERSON EXERCISING ORDINARY COMMON SENSE CAN SUFFICIENTLY UNDERSTAND AND COMPLY WITH, WITHOUT SACRIFICE TO THE PUBLIC INTEREST."

THE MUCH-NEEDED PROTECTIONS OF THE HATCH ACT COME AT THE PRICE OF RESTRICTIONS ONLY ON A NARROW RANGE OF ORGANIZED PARTISAN POLITICAL ACTIVITIES. THIS BALANCE ACHIEVED BY THE ACT IS A VALID, CONSTITUTIONAL EXERCISE OF LEGISLATIVE POWER TO PROTECT THE COMMON GOOD. IT IS PART AND PARCEL OF THE STABILITY OF THE MODERN CIVIL SERVICE, WHICH PROVIDES EMPLOYMENT FREED FROM POLITICAL PATRONAGE FOR FEDERAL WORKERS AND ASSURANCES OF CONTINUITY AND IMPARTIAL ADMINISTRATION OF THE LAWS TO THE GENERAL PUBLIC.

FEDERAL EMPLOYEES, IN A REAL SENSE, HAVE A COMPACT WITH THE PUBLIC, IN WHICH THEY ACCEPT SOME RESTRICTIONS ON THEIR POLITICAL ACTIVITIES, IN EXCHANGE FOR EXTRAORDINARY POWERS OF REGULATION, POLICY-MAKING, AND ENFORCEMENT WHICH THEY PURSUE IN THE RELATIVE SECURITY OF PERMANENT TENURE. IN 1978 THE CIVIL SERVICE REFORM ACT RECOGNIZED THAT THE CIVIL SERVICE NEEDED MORE FLEXIBILITY AND RESPONSIVENESS AND BEGAN A MOVEMENT TOWARDS A MORE DYNAMIC SYSTEM. THIS DYNAMIC FLEXIBILITY AND RESPONSIVENESS CAN BE ACHIEVED, HOWEVER, ONLY IN AN ENVIRONMENT COMPLETELY FREE FROM POLITICAL COERCION.

IF H.R. 3400 WERE ENACTED, WORKING RELATIONS WITHIN THE BUREAUCRACY AS WELL AS BETWEEN CAREER AND POLITICAL EMPLOYEES

WOULD INEVITABLY DETERIORATE. WHATEVER POLITICAL ACTIVITY IS PERMITTED OF FEDERAL EMPLOYEES WILL QUICKLY BECOME THAT WHICH IS REQUIRED OF THEM. I BELIEVE THAT THIS WOULD BE TRUE EVEN OF THE MOST ENLIGHTENED ADMINISTRATIONS AND EVEN UNDER THE MOST STRINGENT PROVISIONS PROHIBITING COERCION OR ARM-TWISTING. WHETHER POLITICAL APPOINTEES OR AMBITIOUS CAREERISTS, THERE WOULD BE SOME WHO WOULD BE DETERMINED TO USE THEIR AUTHORITY TO WORK FOR THE PARTISAN ENDS OF THE PARTY IN POWER, AND THE IMPLICATION WOULD BE CLEAR FOR THEIR SUBORDINATES WHAT VIEWS SHOULD BE ESPOUSED TO GET AHEAD. WHAT MAY NOT BE OVERT, OR PROVABLE, IS THE RETALIATION THAT SOME WOULD INFLICT ON THEIR SUBORDINATES. THE GRIEVANCE PROCEDURES, AND INEVITABLY THE COURTS, WOULD BE OVER-BURDENED WITH CASES WHERE EMPLOYEES POINT TO EVERY PERSONNEL ACTION AS RETALIATORY, AND MANAGERS FIND IT ALMOST IMPOSSIBLE TO PROVE THAT RETALIATION WAS NOT INTENDED.

INEVITABLY, WIDESPREAD POLITICAL INVOLVEMENT WOULD LEAD TO PUBLIC IDENTIFICATION OF FEDERAL EMPLOYEES WITH THE ASPIRATIONS OF POLITICAL PARTIES AND CANDIDATES, INJECT PARTISAN CONSIDERATIONS INTO THE FEDERAL CIVIL SERVICE, AND FOSTER COMPETITION FOR ADVANCEMENT BASED ON ACTIVE SUPPORT OF A PARTICULAR PARTY OR CANDIDATE. THIS TYPE OF POLITICAL INVOLVEMENT CLEARLY WOULD UNDERMINE THE INDEPENDENCE AND INTEGRITY OF THE FEDERAL CIVIL SERVICE, DETRACT FROM THE EFFICIENT ADMINISTRATION OF BUSINESS, AND HAVE AN ADVERSE

EFFECT ON THE PUBLIC PERCEPTION THAT FEDERAL EMPLOYEES PROVIDE EFFICIENT SERVICE TO ALL MEMBERS OF THE COMMUNITY WITHOUT REGARD TO POLITICAL CONSIDERATIONS. SUPPOSE THE PUBLIC BELIEVED THAT PUBLIC CONTRACTS WERE AWARDED TO REWARD OR PUNISH VOCAL OPPONENTS OF THE ADMINISTRATION? OR THAT SOCIAL SECURITY CASES FOR A WHOLE RETIREMENT COMPLEX COULD BE LOST OR MISHANDLED BECAUSE RESIDENTS HAD DEMONSTRATED AGAINST PROPOSED CHANGES IN BENEFITS FOR THE AGED? THIS KIND OF MISCONCEPTION CANNOT EXIST NOW--BUT IT COULD IF THE FEDERAL SERVICE WERE PERCEIVED AS POLITICIZED.

THIS, THEN, IS THE CORE OF OUR OBJECTIONS TO EACH OF THESE CHANGES: THE IDENTIFICATION OF INDIVIDUAL FEDERAL EMPLOYEES WITH A PARTISAN POLITICAL AGENDA THAT WOULD INEVITABLY RESULT FROM ACTIVE POLITICAL INVOLVEMENT. THIS IDENTIFICATION WOULD MAKE THEIR EVERY ACTION SUSPECT AND UNDERMINE THE RELATIONSHIP OF TRUST BETWEEN THE CIVIL SERVICE AND THE PUBLIC THAT IT SERVES.

LIKE SO MANY OTHER "REFORMS," THE PROPOSED CHANGES TO THE HATCH ACT ARE PROFFERED AS A DEFENSE OF SOMEONE'S "RIGHTS." BUT IN TRUTH, AND AS EVERYONE KNOWS, CIVIL SERVANTS ARE PROTECTED IN THE POLITICAL RIGHTS THAT MATTER MOST. THE RESTRICTIONS ON OTHER POLITICAL ACTIVITIES ARE IN FACT PART OF THE BARGAIN THEY MAKE WITH A PUBLIC THAT GIVES THEM PERMANENT TENURE, AND REAL POWER. IT IS NOT A BAD BARGAIN, IT HAS

WORKED WELL FOR DECADES, CONTRIBUTING IN A VITAL WAY TO THE SENSE OF PARTNERSHIP AND GOOD FAITH BETWEEN THE CIVIL SERVICE AND THE NATION WE SERVE.

FOR ALL OF THESE REASONS, WE STRONGLY OPPOSE H.R. 3400 AND URGE THE COMMITTEE NOT TO ACT FAVORABLY ON THIS BILL.

THANK YOU. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.

STATEMENT OF
HONORABLE MARY F. WIESEMAN, SPECIAL COUNSEL
OFFICE OF THE SPECIAL COUNSEL

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

ON

H.R. 3400

"FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1987,"

FEBRUARY 23, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THANK YOU FIRST FOR INVITING ME TO TESTIFY ON BEHALF OF THE OFFICE OF THE SPECIAL COUNSEL (OSC) ON H.R. 3400, THE "FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1987."

THIS BILL WOULD, AMONG OTHER PROVISIONS, REPEAL EXISTING RESTRICTIONS ON PARTISAN POLITICAL ACTIVITY BY ALL FEDERAL EMPLOYEES SO LONG AS THE EMPLOYEES ARE NOT

ON DUTY, IN UNIFORM, IN A ROOM OR BUILDING USED FOR OFFICIAL BUSINESS OR IN A GOVERNMENT VEHICLE; EMPLOYEES WOULD BE PERMITTED TO ENGAGE IN NOW-RESTRICTED PARTISAN POLITICAL ACTIVITIES, INCLUDING BUT NOT LIMITED TO RUNNING FOR PUBLIC OR PARTY OFFICE, MANAGING POLITICAL CAMPAIGNS, MAKING CAMPAIGN SPEECHES, COLLECTING CAMPAIGN CONTRIBUTIONS, ORGANIZING POLITICAL RALLIES AND FUND-RAISING; RETAIN EXISTING PROHIBITIONS ON THE ABUSE OF OFFICIAL AUTHORITY AND SOLICITATION OF CONTRIBUTIONS IN THE WORKPLACE, BUT EXCEPTIONS WOULD PERMIT EMPLOYEES TO SOLICIT FUNDS IN OTHER LOCATIONS, FROM FRIENDS IN THE OFFICE OR PRIVATE SECTOR, OR IN ANY OTHER SITUATION IN WHICH THE FACTS WOULD INDICATE THAT THERE WOULD BE NO ADVERSE EFFECT ON GOVERNMENT INTEGRITY OR PUBLIC CONFIDENCE IN THE SAME; REQUIRE AGENCIES TO GRANT EMPLOYEES ANNUAL LEAVE OR LEAVE WITHOUT PAY ON REQUEST AND WITHOUT NOTICE (ALTHOUGH EMPLOYEES WOULD NOT BE REQUIRED TO TAKE SUCH LEAVE) TO ALLOW THEM TO BECOME CANDIDATES FOR OFFICE, EXCEPT WHEN THE AGENCY DENIES THE REQUEST IN WRITING; AND PERMIT EMPLOYEES TO USE OFFICIAL INFORMATION FOR POLITICAL PURPOSES SO LONG AS THE INFORMATION IS OTHERWISE AVAILABLE TO THE PUBLIC.

IN JULY OF LAST YEAR, I TESTIFIED BEFORE THE SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE, CHAIRED BY SENATOR PRYOR, AND OFFERED MY VIEWS ON LEGISLATION DESIGNED, IN PART, TO PROVIDE ADDITIONAL

RIGHTS TO WHISTLEBLOWERS IN THE FEDERAL GOVERNMENT. IN THAT TESTIMONY, I DEFINED MY PERSPECTIVE ON THE ROLE OF THE OSC IN THE INVESTIGATION OF PROHIBITED PERSONNEL PRACTICES UNDER THE CIVIL SERVICE REFORM ACT (CSRA) OF 1978. MY REMARKS THEN ARE AS RELEVANT TO THE OSC'S ROLE IN THE ENFORCEMENT OF THE HATCH ACT AS TO THE OFFICE'S ROLE IN THE CORRECTION AND PROSECUTION OF PROHIBITED PERSONNEL PRACTICES. WHAT I SAID THEN EXPLAINS IN LARGE PART WHY I AM HERE TODAY TO EXPRESS MY OPPOSITION TO THE RADICAL CHANGES IN THE HATCH ACT PROPOSED BY H.R. 3400.

I TESTIFIED IN JULY THAT I SEE THE PRIMARY MISSION OF THE OSC AS INCLUDING THE PROTECTION OF EMPLOYEE RIGHTS ALONG WITH THE PROTECTION OF THE FEDERAL MERIT SYSTEM. IN MY VIEW, ENACTMENT OF H.R. 3400, AUTHORIZING INVOLVEMENT IN PARTISAN POLITICAL ACTIVITIES BY FEDERAL EMPLOYEES TO AN EXTENT NOT SEEN IN OVER 80 YEARS, WOULD SERIOUSLY COMPROMISE THE PROTECTION OF FEDERAL EMPLOYEES AND THE MERIT SYSTEM. PASSAGE OF THIS BILL, IN MY VIEW, WOULD LEAD INEVITABLY TO THE INTRUSION OF PARTISAN POLITICS INTO THE FEDERAL WORKPLACE IN DIRECT AND INDIRECT WAYS, INCLUDING BOTH OVERT AND SUBTLE FORMS OF COERCION. IT WOULD ALSO LEAD TO THE EROSION OF PUBLIC CONFIDENCE IN THE INTEGRITY OF GOVERNMENTAL DECISION-MAKING AND PROCESSES, AND IN THE EFFICIENT DELIVERY OF GOVERNMENTAL BENEFITS AND SERVICES. AS THE COMMITTEE IS AWARE, THE OSC'S SERIOUS

CONCERNS ABOUT H.R. 3400 ARE SHARED BY A WIDE AND UNUSUALLY DIVERSE SPECTRUM OF PUBLIC INTEREST, BUSINESS AND FEDERAL EMPLOYEE GROUPS. STRONG CONCERNS HAVE BEEN EXPRESSED TO MY OFFICE BY MANY FEDERAL EMPLOYEES DIRECTLY AFFECTED BY POTENTIAL LOOSENING OF HATCH ACT RESTRICTIONS AND PROTECTIONS, AND WE HAVE SEEN NO EVIDENCE OF WIDESPREAD SUPPORT, MUCH LESS INSISTENCE, BY FEDERAL EMPLOYEES FOR REPEAL OF EXISTING HATCH ACT PROVISIONS.

THE OSC HAS BEEN RESPONSIBLE FOR THE ENFORCEMENT OF THE HATCH ACT PROVISIONS RELATING TO POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES, AND CERTAIN STATE AND LOCAL GOVERNMENT EMPLOYEES, SINCE ENACTMENT OF THE CSRA IN 1978. A VITAL COMPONENT OF THAT RESPONSIBILITY IS THE OSC'S STATUTORY RESPONSIBILITY UNDER SECTION 1206(L) FOR ISSUANCE OF ADVISORY OPINIONS TO FEDERAL, STATE AND LOCAL GOVERNMENT EMPLOYEES CONCERNING HATCH ACT MATTERS.

THE OSC ISSUES SUCH ADVISORY OPINIONS IN RESPONSE TO ORAL OR WRITTEN INQUIRIES FROM EMPLOYEES ON HATCH ACT ISSUES. THE OSC HAS ATTORNEYS AVAILABLE DURING REGULAR BUSINESS HOURS TO RESPOND TO SUCH QUESTIONS AND TO GIVE ADVISORY OPINIONS. AGENCY PERSONNEL OFFICES, OFFICES OF INSPECTOR GENERAL (OIGS), OFFICES OF GENERAL COUNSEL (OGCS), AGENCY MANAGERS AND UNIONS ROUTINELY

REFER EMPLOYEES TO THE OSC FOR AUTHORITATIVE ADVICE AND INTERPRETATIONS OF THE HATCH ACT. SINCE SEPTEMBER OF 1983, WE ESTIMATE THAT THE OSC HAS RESPONDED TO APPROXIMATELY 7,000 REQUESTS FOR BOTH ROUTINE AND NON-ROUTINE INFORMATION ON FEDERAL, STATE AND LOCAL HATCH ACT MATTERS. LAST YEAR ALONE, THE OSC ANSWERED APPROXIMATELY 1,400 ORAL AND WRITTEN QUESTIONS ABOUT THE HATCH ACT. IN ADDITION, THE OSC SENT WARNING LETTERS TO 41 INDIVIDUALS, WHOSE ACTIONS VIOLATED THE ACT IN MINOR OR TECHNICAL WAYS BUT WERE INADVERTENT OR OTHERWISE DID NOT WARRANT PROSECUTION. MANY OSC RESPONSES TO EMPLOYEE QUESTIONS AND ALL WARNING LETTERS WERE ACCOMPANIED BY PROVISION OF OSC PUBLICATIONS EXPLAINING THE LAW IN CLEAR, UNDERSTANDABLE TERMS.

OF COURSE, THESE ACTIVITIES DID NOT BEGIN IN 1978 WITH THE ENACTMENT OF THE CSRA, BUT CONTINUED THE ADVISORY ROLE PREVIOUSLY CARRIED OUT BY THE CIVIL SERVICE COMMISSION (CSC). OSC ADVISORY OPINIONS, THEREFORE, DRAW FROM AND BUILD UPON THE ACCUMULATED INTERPRETATIONS OF THE HATCH ACT REFLECTED IN CSC DETERMINATIONS THROUGH 1978. THE OSC INFORMS EMPLOYEES OF THE HATCH ACT'S RESTRICTIONS ON ACTIVE PARTICIPATION IN THE MANAGEMENT AND CONDUCT OF PARTISAN POLITICAL CAMPAIGNS, AND AS IMPORTANTLY, OF ACTIVITIES AND BASIC RIGHTS OF PERSONAL POLITICAL EXPRESSION SAFEGUARDED TO THEM BY THE ACT. THESE INCLUDE THE RIGHT TO:

-- REGISTER AND VOTE AS THEY CHOOSE

-- EXPRESS OPINIONS ABOUT CANDIDATES AND ISSUES

-- JOIN POLITICAL PARTIES OR CLUBS

-- SIGN NOMINATING PETITIONS

-- CONTRIBUTE MONEY TO POLITICAL ORGANIZATIONS OR ATTEND FUND-RAISING FUNCTIONS

-- ATTEND POLITICAL MEETINGS AND RALLIES

-- ASSIST IN NON-PARTISAN VOTER REGISTRATION DRIVES

-- PARTICIPATE IN NON-PARTISAN POLITICAL CAMPAIGNS

-- CAMPAIGN FOR OR AGAINST REFERENDUM QUESTIONS, CONSTITUTIONAL AMENDMENTS OR MUNICIPAL ORDINANCES

-- WEAR OR DISPLAY POLITICAL BADGES, BUTTONS OR STICKERS

AN IMPORTANT ADJUNCT OF THE OSC'S RESPONSIBILITY FOR ADVISING EMPLOYEES ON PERMISSIBLE AND IMPERMISSIBLE POLITICAL ACTIVITIES IS THE OSC'S OUTREACH EFFORTS. THESE CONSIST LARGELY OF GENERAL DISSEMINATION OF OSC PAMPHLETS AND POSTERS ON HATCH ACT ISSUES AFFECTING FEDERAL, STATE AND LOCAL GOVERNMENT EMPLOYEES AND POLITICAL ACTION COMMITTEES, AND TRAINING AND OTHER PUBLIC SPEAKING ENGAGEMENTS BY KNOWLEDGEABLE OSC STAFF. THE OSC HAS DISTRIBUTED NEARLY 150,000 OF ITS HATCH ACT PAMPHLETS AND POSTERS IN THE PAST FOUR AND ONE-HALF YEARS, PROVIDING BASIC HATCH ACT ADVICE IN CLEAR AND CONCISE TERMS. I REQUEST THAT A COPY OF THE OSC PUBLICATIONS, "POLITICAL ACTIVITY AND THE FEDERAL EMPLOYEE," "POLITICAL ACTIVITY AND THE STATE AND LOCAL EMPLOYEE," AND "HATCH ACT FACTS ABOUT PACS" BE INCLUDED IN THE RECORD OF THIS HEARING. SINCE SEPTEMBER OF 1986, OSC EMPLOYEES HAVE SPOKEN TO MORE THAN 2,700 PEOPLE ON THE HATCH ACT, INCLUDING PRESIDENTIAL APPOINTEES, MEMBERS OF THE SENIOR EXECUTIVE SERVICE, AGENCY ETHICS OFFICERS AND LABOR AND EMPLOYEE RELATIONS SPECIALISTS.

IN THE PUBLIC DEBATE THAT HAS ARISEN OUT OF THE CURRENT EFFORT TO REPEAL IMPORTANT HATCH ACT RESTRICTIONS AND PROTECTIONS, SOME HAVE CLAIMED THAT EMPLOYEES NEED TO BE FREE TO ACTIVELY PARTICIPATE IN PARTISAN POLITICAL ACTIVITIES BECAUSE THE CURRENT HATCH ACT STATUTE IS VAGUE AND CONFUSING. IT IS ALSO SAID

THAT EMPLOYEES DO NOT KNOW WHAT IS PROHIBITED AND WHAT IS NOT, AND THAT THEY HAVE CENSORED THEIR OWN ACTIVITIES IN AN EXCESS OF CAUTION. GUIDELINES DEFINING PERMISSIBLE AND PROHIBITED ACTIVITIES, HOWEVER, APPEAR IN TITLE 5 OF THE CODE OF FEDERAL REGULATIONS AT PART 733. FURTHER, AS I HAVE SAID, THE OSC IS CHARGED BY LAW WITH THE RESPONSIBILITY FOR ISSUING ADVISORY OPINIONS TO ASSIST EMPLOYEES, AND EVERY EMPLOYEE WHO ASKS MY OFFICE A QUESTION GETS AN ANSWER. EVEN WITH THE BEST REGULATIONS AND ACTIVE OUTREACH, THERE WILL ALWAYS BE SOME EMPLOYEES WHO ARE UNAWARE OF THE ESSENTIAL BASIC PROVISIONS OF THE ACT OR ITS IMPLEMENTING REGULATIONS. TO THE EXTENT THAT THERE ARE EMPLOYEES WHO HAVE QUESTIONS ABOUT THEIR RIGHTS UNDER THE HATCH ACT, IT HAS BEEN OUR EXPERIENCE THAT EMPLOYEES USUALLY HAVE SUCH QUESTIONS BECAUSE THEY HAVE NOT READ THE REGULATIONS, CONTACTED THE OFFICIALS IN THEIR AGENCY RESPONSIBLE FOR ADDRESSING STANDARDS OF CONDUCT MATTERS AND FAMILIAR WITH THE OSC, OR AVAILED THEMSELVES OF THE OSC'S ADVISORY OPINION SERVICE. FINALLY, THE FACT CANNOT BE IGNORED THAT EMPLOYEES SOMETIMES KNOWINGLY PROTECT THEMSELVES FROM UNWANTED PARTICIPATION IN POLITICAL ACTIVITIES BY CITING OSTENSIBLE HATCH ACT RESTRICTIONS ON THOSE ACTIVITIES.

SECTION 1206(E)(1) OF TITLE 5 OF THE UNITED STATES CODE PROVIDES THAT IN ADDITION TO ITS OTHER DUTIES, THE OSC IS RESPONSIBLE FOR INVESTIGATING ALLEGATIONS OF

INVOLVEMENT IN PROHIBITED POLITICAL ACTIVITIES BY COVERED FEDERAL GOVERNMENT EMPLOYEES UNDER CHAPTER 73 OF TITLE 5, AND BY COVERED STATE AND LOCAL GOVERNMENT EMPLOYEES (IN GENERAL, PERSONS EMPLOYED BY A STATE OR LOCAL AGENCY WHOSE PRINCIPAL EMPLOYMENT IS IN CONNECTION WITH AN ACTIVITY FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE FEDERAL GOVERNMENT) UNDER CHAPTER 15 OF THE SAME TITLE. AS A RULE, OSC INVESTIGATIONS ARE PREDICATED UPON ALLEGATIONS RECEIVED FROM AGENCY EMPLOYEES, SUPERVISORS, OIGS, OGCS, THE PRESS AND OTHER MEMBERS OF THE PUBLIC.

THE OSC IS AUTHORIZED UNDER 5 U.S.C. SECTION 1206(G)(1) TO FILE A COMPLAINT SEEKING DISCIPLINARY ACTION AGAINST AN EMPLOYEE AFTER AN OSC INVESTIGATION DISCLOSES EVIDENCE OF PROHIBITED POLITICAL ACTIVITY. FOLLOWING A FINDING OF A HATCH ACT VIOLATION BY A COVERED FEDERAL EMPLOYEE, THE MERIT SYSTEMS PROTECTION BOARD (MSPB) IS AUTHORIZED TO IMPOSE A PENALTY OF SUSPENSION FOR NO LESS THAN 30 DAYS, OR REMOVAL FROM FEDERAL SERVICE. VIOLATIONS BY A COVERED STATE OR LOCAL GOVERNMENT EMPLOYEE ARE PUNISHABLE BY REMOVAL.

THE HATCH ACT, AND THE PRINCIPLES INCORPORATED IN THE ACT, HAVE BEEN THE SUBJECT OF SPIRITED, SOMETIMES CONTENTIOUS, DEBATE FROM AT LEAST THE 1800'S THROUGH TODAY. FROM THE EARLIEST DAYS OF THE REPUBLIC, INVOLVEMENT BY FEDERAL GOVERNMENT EMPLOYEES IN PARTISAN

POLITICAL ACTIVITIES HAS BEEN SEEN TO BE A DANGER TO THE INTEGRITY OF GOVERNMENTAL SERVICE, AND AS IMPORTANT, IF NOT MORE SO, TO THE PUBLIC'S PERCEPTION OF THE IMPARTIALITY OF GOVERNMENT EMPLOYEES. MUCH HAS BEEN WRITTEN ABOUT THE CONCERNS EXPRESSED BY A SUCCESSION OF PRESIDENTS AND HEADS OF THE CSC ABOUT THE POLITICIZATION OF THE FEDERAL WORK FORCE.

IT IS REPORTED THAT PRESIDENT GEORGE WASHINGTON IMPOSED A MERIT TEST FOR SELECTION OF HIS APPOINTEES. IN HIS 1976 ARTICLE ENTITLED "RESTRICTIONS ON THE POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES: THE HATCH ACT AND BEYOND," PROFESSOR ROBERT G. VAUGHN OUTLINED THE HISTORICAL DEVELOPMENT OF THE ACT. HE NOTED THAT AS EARLY AS 1801, PRESIDENT THOMAS JEFFERSON PRESCRIBED A POLICY OF POLITICAL NEUTRALITY FOR FEDERAL EMPLOYEES IN A CIRCULAR STATING THAT:

> "[T]HE PRESIDENT OF THE UNITED STATES HAS SEEN WITH DISSATISFACTION OFFICERS OF THE GOVERNMENT TAKING ON VARIOUS OCCASIONS ACTIVE PARTS IN THE ELECTIONS OF PUBLIC FUNCTIONARIES, WHETHER OF THE GENERAL OR STATE GOVERNMENTS .... THE RIGHT OF ANY OFFICER TO GIVE HIS VOTE AT ELECTIONS AS A QUALIFIED CITIZEN IS NOT MEANT TO BE RESTRAINED, NOR, HOWEVER GIVEN, SHALL IT HAVE ANY EFFECT TO HIS PREJUDICE; BUT IT IS EXPECTED THAT HE WILL NOT ATTEMPT TO INFLUENCE THE VOTES OF OTHERS, NOR TAKE

ANY PART IN THE BUSINESS OF ELECTIONEERING, THAT BEING DEEMED INCONSISTENT WITH THE SPIRIT OF THE CONSTITUTION AND HIS DUTIES TO IT."

AN EARLY STATUTORY PROHIBITION ON POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES WAS ENACTED BY CONGRESS IN 1876. THAT ACT PROHIBITED AN EXECUTIVE EMPLOYEE FROM REQUESTING, RECEIVING OR GIVING "A THING OF VALUE FOR POLITICAL PURPOSES." IN 1883, CONGRESS ENACTED THE PENDLETON ACT, THE FIRST COMPREHENSIVE CIVIL SERVICE REFORM LEGISLATION, WHICH PROVIDED THAT NO PERSON IN PUBLIC SERVICE SHOULD FOR THAT REASON BE OBLIGED TO CONTRIBUTE TO A POLITICAL FUND OR TO PROVIDE ANY SERVICE; IT ALSO ESTABLISHED THE CSC AND AUTHORIZED THE PRESIDENT TO ISSUE RULES TO PREVENT POLITICAL COERCION. CIVIL SERVICE RULE 1, PROMULGATED BY PRESIDENT CHESTER A. ARTHUR, REITERATED THE STATUTORY PROHIBITION ON THE USE BY CIVIL SERVICE EMPLOYEES IN THE CLASSIFIED SERVICE OF OFFICIAL AUTHORITY OR INFLUENCE TO COERCE THE POLITICAL ACTION OF ANY PERSON OR BODY.

IN 1907, PRESIDENT THEODORE ROOSEVELT AMENDED CIVIL SERVICE RULE 1 IN A FURTHER EFFORT TO ARREST THE POLITICIZATION OF THE CIVIL SERVICE. THIS ORDER BECAME THE FORERUNNER OF THE LEGISLATION ENACTED BY CONGRESS IN 1939, KNOWN SINCE THAT TIME AS THE HATCH ACT. WHEREAS THE 1883 VERSION OF RULE 1 WAS AIMED AT ERADICATING COERCIVE POLITICAL ACTIVITY IN THE CIVIL

SERVICE, THE 1907 VERSION RESTRICTED BOTH COERCIVE AND VOLUNTARY POLITICAL ACTIVITY IN THE FOLLOWING TERMS:

> "NO PERSON IN THE EXECUTIVE CIVIL SERVICE SHALL USE HIS OFFICIAL AUTHORITY OR INFLUENCE FOR THE PURPOSE OF INTERFERING WITH AN ELECTION OR AFFECTING THE RESULT THEREOF. PERSONS WHO, BY THE PROVISION OF THESE RULES ARE IN THE COMPETITIVE CLASSIFIED SERVICE, WHILE RETAINING THE RIGHT TO VOTE AS THEY PLEASE AND TO EXPRESS PRIVATELY THEIR OPINIONS ON ALL POLITICAL SUBJECTS, SHALL TAKE NO ACTIVE PART IN POLITICAL MANAGEMENT OR IN POLITICAL CAMPAIGNS." (EMPHASIS ADDED)

DURING ELECTION CAMPAIGNS HELD IN 1936 AND 1938, SCANDALS AROSE REGARDING MISUSE OF FEDERAL RELIEF FUNDS ADMINISTERED BY THE WORKS PROGRESS ADMINISTRATION. AS A RESULT, THE HATCH ACT WAS ENACTED IN 1939 TO PROVIDE A MORE EFFECTIVE MEANS OF INSURING THE INTEGRITY AND NONPARTISAN, POLITICALLY NEUTRAL POSTURE OF THE BURGEONING CIVIL SERVICE. ENACTMENT OF THE HATCH ACT, IN EFFECT, CODIFIED CIVIL SERVICE RULE 1 AND APPLIED IT TO VIRTUALLY ALL EXECUTIVE BRANCH EMPLOYEES, MANDATED REMOVAL FOR VIOLATORS, AND EXPRESSLY PERMITTED EMPLOYEES TO EXPRESS THEIR OPINIONS ON ALL POLITICAL SUBJECTS.

The Hatch Act has been amended in some significant respects since 1939, but without affecting the essential protections applicable to federal employees. Amendments to the Hatch Act enacted in 1940 expanded the statute to extend political prohibitions to District of Columbia employees, as well as to certain state and local employees in agencies funded by federal loans and grants; expressly permitted employees to express their opinions on political candidates as well as political subjects; further defined "an active part in political management or in political campaigns" as those acts prohibited by the CSC before July 19, 1940; and authorized active emlpoyee involvement in non-partisan elections and issues. In 1950, the penalty provision mandating removal of federal Hatch Act violators was amended to permit the imposition of a 90-day suspension without pay, and in 1962, the minimum sanction to be imposed against violators was reduced to 30-day suspension without pay. In 1974, the restriction on state and local employees was eased to permit such employees to actively participate in political management and campaign activities, while continuing the prohibition on their partisan political candidacy for public office; the provision identifying exempt District of Columbia employees was also redefined. In 1979, references in the law to the defunct CSC were changed to refer to the MSPB.

In the leading cases of United Public Workers v. Mitchell, 330 U.S. 75 (1947), and United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973), the Supreme Court held that the Hatch Act's restrictions on active involvement by federal employees in political management or political campaigns did not violate either their constitutional rights of free speech, assembly or due process, and were not vague or overbroad. With these two decisions, the Supreme Court made it clear that the Hatch Act reflects a permissible, and appropriate, balance between between government employee participation in political affairs, and governmental interests in the efficiency and the real and apparent integrity of its operations.

There can be little question at this point that the restrictions on active involvement in partisan political activities by government employees which have evolved over a period of 200 years reflect judgements, shared by all three branches of government, that no public employee should be penalized for his or her political beliefs, or used as the political minion of the party in or out of power; that personal merit, rather than political allegiance, should be the basis for selection, promotion, ratings, awards, and other incidents of employment; that government employees should make and implement public policy and programs

CONSISTENT WITH THE LAW AND NOT A POLITICAL PARTY AGENDA; THAT INTEGRITY AND IMPARTIALITY IN THE DISCHARGE OF OFFICIAL DUTIES SHOULD BE SAFEGUARDED; AND THAT THE PUBLIC SHOULD BE HELD SECURE IN THE KNOWLEDGE THAT GOVERNMENT EMPLOYEES ARE PUBLIC SERVANTS IN EVERY SENSE OF THE TERM.

TODAY'S HEARING IS YET ANOTHER IN A CONTINUING SERIES OF CONGRESSIONAL EFFORTS TO RE-ASSESS THE BALANCE STRUCK BY A SUCCESSION OF PRESIDENTS AND THE CONGRESS, AND UPHELD BY THE SUPREME COURT, BETWEEN EMPLOYEE RIGHTS AND VITAL PUBLIC INTERESTS. AFTER EARNEST CONSIDERATION OF THE ARGUMENTS FOR AND AGAINST THE DRAMATIC CHANGES IN HATCH ACT PRINCIPLES THAT WOULD BE EFFECTED BY H.R. 3400, I HAVE CONCLUDED THAT I CANNOT SUPPORT THE CHANGES PROPOSED, BECAUSE THEY WOULD SO FUNDAMENTALLY RECAST A LAW THAT HAS SERVED SO LONG AND SO WELL TO PROTECT THE VAST MAJORITY OF GOVERNMENT EMPLOYEES, AND TO PRESERVE IMPORTANT PUBLIC VALUES.

AMONG MY CONCERNS IS THAT EVEN WITH THE STRONGEST OF CONTROLS AGAINST COERCION OF POLITICAL ACTIVITY BY GOVERNMENT EMPLOYEES, IT SEEMS UNREALISTIC TO BELIEVE THAT THEY WILL BE OBLIVIOUS TO THE ADVANTAGES OF POLITICAL PARTISANSHIP WHEN COMPETING FOR PROMOTIONS, TRAINING, OR OTHER EMPLOYMENT BENEFITS WITH OTHER POLITICALLY ACTIVE EMPLOYEES. OVERT COERCION IS COMPARATIVELY EASY TO GUARD AGAINST AND TO ENFORCE;

WHAT IS NOT SO EASILY REGULATED IS THE CLIMATE THAT CAN EASILY ARISE BASED ON THE UNSPOKEN ASSUMPTION THAT POLITICAL CONFORMITY IS THE ROUTE TO ACHIEVEMENT AND SECURITY. SUCH A CLIMATE WOULD LEAD INEXORABLY TO SUBTLE, SELF-IMPOSED PRESSURES ON EMPLOYEES TO CONFORM, OR APPEAR TO CONFORM, TO WHATEVER POLITICAL TENDENCY WOULD ASSURE GREATER JOB SECURITY. THIS PHENOMENON WAS BEST DESCRIBED BY ROBERT HAMPTON, FORMER HEAD OF THE CSC, IN HIS TESTIMONY IN 1975 ON AN EARLIER EFFORT TO LOOSEN HATCH ACT RESTRICTIONS ON POLITICAL ACTIVITY. HE SAID THEN:

> "THERE MAY ALWAYS BE POLITICAL APPOINTEES OR ADMINISTRATORS WHO, FOR ONE REASON OR ANOTHER, BELIEVE THAT EITHER THEIR PERSONAL INTERESTS OR THEIR PHILOSOPHICAL INTERESTS WILL BE SERVED BY WORKING FOR PARTISAN POLITICAL CANDIDATES REPRESENTING THE PARTY IN POWER. WHILE SUCH PERSONS MAY NOT COERCE THEIR SUBORDINATES, THEY WILL MAKE IT WELL KNOWN WHERE THEY STAND ON THIS ISSUE. FOR A SUBORDINATE TO ACTIVELY SUPPORT THE OPPOSITION CANDIDATE UNDER SUCH CIRCUMSTANCES WOULD REQUIRE UNUSUAL COURAGE. IT IS EQUALLY TRUE THAT FOR A SUBORDINATE TO REFRAIN FROM SUPPORTING HIS SUPERIOR'S CHOICE OF CANDIDATE WILL ALSO REQUIRE COURAGE.

> ... THERE IS A MORE SUBTLE FORM OF COERCION WHICH ONLY PROHIBITORY LEGISLATION LIKE THE HATCH ACT CAN DEAL WITH. THIS IS THE INTERNAL PRESSURE WHICH IS APPLIED BY THE CIVIL SERVANT TO HIMSELF IN THE HOPE OF ADVANCING HIS OR HER CAREER. KNOWING THE PARTISAN POLITICAL VIEWS OF THE PEOPLE WHO MUST MAKE PROMOTION DECISIONS, AND FACING A VACANCY FOR WHICH THE EMPLOYEE IS IN COMPETITION AT THE TIME OF A POLITICAL ELECTION, AND BELIEVING THAT OTHERS IN COMPETITION MAY BE ENGAGING IN PARTISAN POLITICAL ACTIVITY FOR THE SAME PARTY AS THAT OF THE SELECTING OFFICER, THE EMPLOYEE WILL BE UNDER GREAT PRESSURE BOTH TO REFRAIN FROM SUPPORTING CANDIDATES OF THE OPPOSITION, AND TO ACTIVELY SUPPORT CANDIDATES FAVORED BY HIS SUPERIOR."

THESE CONCERNS RESONATE FOR ME WHEN I CONSIDER THE RECENT PROSECUTION BY MY OFFICE OF THREE STATE OFFICIALS FOR POLITICAL COERCION OF SUBORDINATE STATE EMPLOYEES, WHO ARE PERMITTED BY LAW TO ACTIVELY PARTICIPATE IN PARTISAN POLITICAL CAMPAIGNS AND ORGANIZATIONS. THE COERCION OF THESE EMPLOYEES ONLY CAME TO OUR ATTENTION WHEN ONE COURAGEOUS FORMER EMPLOYEE BLEW THE WHISTLE ON THIS CORRUPTION OF POWER.

When OSC investigators first arrived on the scene, they were met with considerable reticence. Only through the persistence of OSC investigators and attorneys, and the compulsion of subpoenas, were we able to overcome witnesses' fear of coming forward against their bosses. The investigation uncovered numerous incidents of political coercion of substantial sums of money and services from many subordinate employees, who came to believe that their submission to supervisors' direct and indirect blandishments was the built-in "price" for selection, job rewards and job security. Allegations of political coercion by state employees in other jurisdictions have only surfaced in connection with investigations of unrelated offenses by other law enforcement agencies.

An additional concern is that if jobs and benefits go to employees actively involved in political activities for a party or candidate also supported by a supervisor, then it seems reasonable to expect that employees who are politically inactive or who have worked for another party or candidate, will conclude that it was their politics--not their performance--that cost them their promotion, a favorable rating, or training opportunity. With that, we would have to expect that complaints to the OSC of discrimination based on political affiliation, a prohibited personnel practice under 5 U.S.C. Section 2302(b)(1(E) and the one

GENERALLY LEAST ALLEGED, WOULD INCREASE SIGNIFICANTLY.

I QUESTION WHETHER FEDERAL GOVERNMENT EMPLOYEES AND THE MERIT SYSTEM AS A WHOLE SHOULD, ABSENT COMPELLING CIRCUMSTANCES, BE SUBJECTED TO THESE TYPES OF ADDITIONAL DIRECT OR INDIRECT PRESSURE POINTS ON THE LOYALTIES AND ENERGY OF THE GOVERNMENT WORKFORCE. MUCH HAS BEEN SAID ABOUT THE CHILLING EFFECT OF THE HATCH ACT ON EMPLOYEES' FREEDOMS, INCLUDING CLAIMS THAT EMPLOYEES CENSOR THEIR OWN CONDUCT TO SUCH AN EXTENT THAT THEY REFRAIN FROM ENGAGING IN EVEN PERMISSIBLE POLITICAL ACTIVITIES. I RESPECTFULLY SUBMIT, IF HISTORY IS ANY GUIDE, THAT THE REVERSE WOULD BE LIKELY TO BE TRUE IF THE HATCH ACT WERE REVISED TO PERMIT PARTISAN POLITICAL ACTIVITY--THAT IS, EMPLOYEES WOULD FEEL THE NEED TO ENGAGE IN PARTISAN POLITICAL ACTIVITY THAT THEY WOULD NOT HAVE UNDERTAKEN OTHERWISE, SO THAT WHAT WOULD BE PERMITTED UNDER A "REFORMED" HATCH ACT WOULD BE SEEN TO BE ADVISABLE, OR EVEN REQUIRED, TO WIN OR MAINTAIN THE FAVOR OF A POLITICALLY ACTIVE HIERARCHY IN THE WORKPLACE. AND WHILE IT MAY BE SAID THAT THE LAW IS ADEQUATE TO GUARD AGAINST COERCION OF POLITICAL ACTIVITY OR DISCRIMINATION AGAINST EMPLOYEES ON THE BASIS OF THEIR POLITICAL AFFILIATION, I BELIEVE THAT THE EXISTENCE OF THE HATCH ACT RESTRICTIONS ON PARTISAN POLITICAL ACTIVITY HAS CREATED A CLIMATE IN WHICH THE OPPORTUNITIES FOR SUCH COERCION AND DISCRIMINATION ARE FAR FEWER THAN THEY WOULD BE WITHOUT SUCH RESTRICTIONS.

AN ADDITIONAL CONCERN IS THE EFFECT OF ANY RE-POLITICIZATION OF THE WORKFORCE ON PUBLIC PERCEPTIONS OF GOVERNMENTAL INTEGRITY. OUGHT WE TO BE THINKING IN TERMS OF LEGISLATIVE ACTION THAT WOULD TEND TO INCREASE PUBLIC SKEPTICISM ABOUT THE INTEGRITY OF GOVERNMENT OPERATIONS AND EMPLOYEES, BASED ON PARTISAN POLITICAL CONSIDERATIONS? IS IT REALISTIC TO THINK THAT WE CAN ACHIEVE A POLITICALLY ACTIVE, YET IMPARTIAL AND OBJECTIVE GOVERNMENT WORKFORCE? WILL IT BE POSSIBLE FOR THE PUBLIC TO VIEW THE ACTIVITIES OF ANY GOVERNMENT WORKER ENGAGED IN PARTISAN POLITICS WITH FULL CONFIDENCE THAT THE EMPLOYEE'S UNDIVIDED LOYALTY IS TO THE PUBLIC AS A WHOLE WITHOUT REGARD TO THE AGENDA AND POLICIES OF A POLITICAL PARTY? HATCH ACT PRINCIPLES HAVE BEEN SO MUCH A PART OF THE FABRIC OF PUBLIC LIFE FOR SO LONG, THAT I THINK IT CAN FAIRLY BE SAID THAT THIS COUNTRY HAS NOW EVOLVED A TRADITION OF A NON-PARTISAN, NEUTRAL PUBLIC SERVICE--A TRADITION THAT WAS BORN OUT OF PAST ABUSES AND CORRUPTION OF THE MERIT SYSTEM.

AS I SAID AT THE OUTSET OF MY TESTIMONY, SINCE 1978, THE OSC HAS BEEN RESPONSIBLE FOR INTERPRETING THE HATCH ACT, ADVISING EMPLOYEES ON THE LAW AND ENFORCING THE LAW. THE OSC HAS FILED CHARGES OF HATCH ACT VIOLATIONS BY FEDERAL EMPLOYEES IN ONLY 29 CASES SINCE 1980. DURING THE SAME PERIOD, OF THE APPROXIMATELY 11,080 ALLEGATIONS OF PROHIBITED PERSONNEL PRACTICES

RECEIVED BY THE OSC FROM FEDERAL EMPLOYEES, ONLY 180 HAVE BEEN BASED ON CLAIMS OF DISCRIMINATION BASED ON POLITICAL AFFILIATION, NONE OF WHICH HAVE BEEN SUBSTANTIATED OR UPHELD. IN A RECENT SURVEY OF FEDERAL EMPLOYEES BY THE MSPB, ONLY ONE PER CENT OF THE ALMOST 17,000 RESPONDENTS ASSERTED THAT THEY HAD BEEN DENIED A JOB OR JOB REWARD AS A RESULT OF THEIR POLITICAL AFFILIATION. THE MOST RECENT SURVEY OF FEDERAL EMPLOYEE ATTITUDES ON THE HATCH ACT, SAID IN A 1979 GAO REPORT TO HAVE YIELDED RELIABLE DATA, WAS DONE IN 1967. IT FOUND THAT WHILE THERE WAS SOME CONFUSION AT THAT TIME OVER EXACTLY WHAT ACTIVITIES WERE PROHIBITED, 91 PER CENT OF ALL FEDERAL EMPLOYEES WERE AWARE OF LAWS OR REGULATIONS PROHIBITING PARTISAN POLITICAL ACTIVITY AND 85 PER CENT WERE AWARE OF THE HATCH ACT. THESE FIGURES STRONGLY SUGGEST THAT THE BASIC PRINCIPLES EMBODIED IN THE HATCH ACT HAVE BECOME SO INGRAINED IN PUBLIC EMPLOYEE CONSCIOUSNESS, SO MUCH A PART OF THE FABRIC OF PUBLIC SERVICE, THAT THE ACT IS SELF-POLICING IN A SENSE--THAT IS, WHILE EMPLOYEES MAY NOT BE FAMILIAR WITH ALL THE NUANCES OF ACT, THEY SEEM TO KNOW THAT POLITICAL ACTIVITY BEYOND VOTING AND EXPRESSIONS OF THEIR PERSONAL OPINIONS IS A REGULATED AREA, SUCH THAT PRUDENCE IS WARRANTED.

IN CLOSING, I BELIEVE THAT THE HATCH ACT REPRESENTS A JUDICIOUS BALANCE BETWEEN IMPORTANT FREEDOMS AND HISTORIC VALUES THAT HAS SERVED THIS

COUNTRY, FEDERAL EMPLOYEES AND THE MERIT SYSTEM WELL, WHILE PERMITTING GOVERNMENT WORKERS LATITUDE IN EXPRESSING THEIR PERSONAL POLITICAL OPINIONS AND IN PURSUING PERMISSIBLE POLITICAL ACTIVITIES. I AM EXTREMELY CONCERNED THAT H.R. 3400 WOULD UPSET THAT DELICATE BALANCE IN WAYS THAT WILL HAVE SERIOUS CONSEQUENCES FOR GOVERNMENT EMPLOYEES, THE MERIT SYSTEM AND PUBLIC CONFIDENCE IN THE INTEGRITY OF THE GOVERNMENT AS A WHOLE. FOR ALL OF THESE REASONS, I DO NOT SUPPORT ENACTMENT OF THIS MEASURE.

Department of Justice

STATEMENT

OF

JOHN C. KEENEY
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C.

CONCERNING

H.R. 3400

ON

FEBRUARY 23, 1988

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to present the views of the Department of Justice on H.R. 3400. I am here primarily to address the concerns this legislation raises for the Criminal Division. However, these concerns are only a part of the Department's objections to this bill. We have equally important constitutional and policy objections that are set forth in an analysis which is attached to my prepared statement. We request that the analysis and the statement be included in the record of this hearing.

The purpose of the bill is to repeal the Hatch Act's ban on partisan campaign activity by federal employees. The Department of Justice believes that this legislation is ill-advised and we strongly oppose its enactment.

The Hatch Act Serves Vital Public Interests

This legislation seeks to foster a partisan federal work force. Its ramifications are extremely undesirable. Enactment of this legislation would create and encourage endless opportunities for corrupt patronage practices and would seriously diminish public confidence in the even-handed administration of government operations.

In addition to our concerns that the bill creates numerous possibilities for public corruption, our opposition is based upon the fact that it would erode two fundamental principles central to the operation of the Executive Branch of the Federal Government. Those principles are the nonpartisan administration and enforcement of federal laws, and the advancement in federal civil service based solely on merit. Partisan campaigning by the vast majority of federal employees would so sorely alter these principles as we now know them that they would be lost completely.

The 1939 Hatch Act was not enacted in a vacuum. It was a statute perceived by the Congress as a necessary and long overdue remedy for a century of increasingly gross patronage abuses within the federal government, not only among civil servants, but even worse, among the private beneficiaries of the very federal programs the civil servants were administering.

Patronage and the idea that "to the victors belong the spoils," go back to the Jacksonian era in the early nineteenth century. The adverse societal consequences of this invidious "spoils system" became increasingly apparent as the role of the Federal Government in the lives of the people expanded. Not long after the Civil War, the cancer of patronage had so infected the body of public administration that a disgruntled postal worker assassinated President Garfield because of his disappointment over not receiving what he thought was his just patronage reward. The national reaction to this assassination led to the enactment of the landmark Pendleton Civil Service Act of 1883.

This statute created a civil service system based on merit, whose members were to be selected on the basis of their qualifications for the jobs they sought, and not because of their political loyalty to the incumbent administration. At its beginning, those in the merit civil service system comprised only about ten percent of the employees in the Executive Branch. This percentage increased substantially over the ensuring years, as the public demand for non-partisan federal service became more vocal and acute.

By 1907, the need for still further safeguards against politicization of the federal public service prompted President Theodore Roosevelt to issue Civil Service Rule No. 1.[1] This Rule banned all federal employee in the competitive service from engaging actively in political campaigns. Penalties for violating the Rule included disciplinary suspension and, in extreme cases, termination of employment. The Rule was administered on a case by case basis by the Civil Service Commission. Between 1907 and 1939, the Commission rendered over 2000 opinions interpreting this federal anti-politicking Rule. By this time, the United States was well on the way to a system of public administration that was both politically non-partisan and free from internal political coercion.

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[1] The Rule was an extensive revision of an earlier, more narrowly focused version of Rule No. 1, which had been promulgated by President Chester A. Arthur.

However, during the era of the New Deal and the subsequent flood of federal programs and grants to the States led to new and undesirable forms of political patronage practices. New Deal programs enacted to help the poor, the dispossessed, and other victims of the Great Depression were perverted by local political bosses into instruments by which the politically loyal could be rewarded -- and the politically unfaithful punished. Corruption of federal programs for partisan political ends became so blatant that the governor of North Dakota was able to defraud the United States by diverting federal work relief program benefits into the coffers of local politicians. See Langer v. United States, 76 F.2d 817 (1935). By 1939, the public was demanding that such practices stop. The response of Congress was to enact the Hatch Act.

The main thrust of the Hatch Act is to prohibit employees of the Executive Branch of the Federal Government from engaging in "the active management of political campaigns," a concept that was defined in the statute to include all activities which the Civil Service Commission determined to be illegal under Civil Service Rule No. 1. See 5 U.S.C. §7324. The Hatch Act regulations are set forth at 5 C.F.R. 733.101, et seq. They permit federal employees to express opinions on political subjects and to contribute to the candidates of their choice. However, they prohibit federal personnel from such overtly partisan activities as soliciting political contributions, actively participating in political organizations, running for elective office in partisan elections, and misusing their authority over public programs to achieve partisan ends.

The Hatch Act and its implementing regulations have been challenged many times as unconstitutional infringements on federal employees' First Amendment rights of free association and expression. These challenges have been unsuccessful. Indeed, the Supreme Court has considered the Hatch Act's First Amendment ramifications on not one but two occasions. Both of these cases resulted in a resounding affirmation of the Act's constitutionality as a necessary safeguard to ensure both the appearance and the actuality of a politically detached federal civil service. See United Public Workers v. Mitchell, 330 U.S. 75 (1947); Civil Service Commission v. Letter Carriers, 413 U.S. 548 (1973).

The Hatch Act is not the only federal law that protects the public against political corruption in the civil service, but it may be the most important. It has been the Criminal Division's experience that the Hatch Act ban has served as a visible and, for the most part, effective dike against the tide of patronage abuse which, history shows, can spill over into the area of criminal conduct. The fact that it has not been necessary to divert significant federal prosecutorial resources to the investigation and prosecution of criminal patronage abuses is a direct consequence of the existence and deterrent influence of the Hatch Act. As long as it has been illegal under the Hatch Act for federal civil servants to solicit political contributions, forced political-giving schemes within the federal service have not materialized. As long as it has been illegal under the Hatch Act for federal employees to actively participate in political organizations, the diversion of federal program benefits to partisan political ends has been limited. As long as it has been illegal for federal employees to actively campaign for political candidates, federal offices have not been converted into political fiefs. As long as it has been illegal under the Hatch Act for federal employees to be political candidates or active advocates of partisan causes, the day to day administration of federal programs has been impartial. Just as important, the public perceives the day to day implementation of these programs as being impartial.

The Federal Government today performs extremely sensitive functions, many of which were unheard of in the days when the spoils system first took root in America. The Federal Government has always investigated and prosecuted crimes and, to some extent at least, collected taxes. Today, it also regulates our daily lives to an extent unimaginable only three generations ago. Given this pervasive federal influence over our citizens' affairs, we doubt very strongly that the American public would tolerate a law which allowed a Section Chief in the Criminal

Division, who decides whether or not to indict public officials, to serve simultaneously in his off hours as a Party Chairman of a political party in Arlington, Virginia. We also seriously question whether the American public would long tolerate a government in which agents of the Internal Revenue Service, or of the Federal Bureau of Investigation, were permitted to solicit political contributions or to engage in fund raising programs for political candidates. By the same token, we doubt that the American public would tolerate the day to day administration of federal programs by ostensible "civil servants" who are actively and visibly affiliated with partisan political candidates and causes.

Mr. Chairman, we believe it would be extremely unwise for Congress to rely solely on existing federal criminal statutes to deal with gross patronage fraud. Yet, the enactment of H.R. 3400 would leave these statutes as virtually the only bulwark against a return to the spoils system. As an initial matter, the Department of Justice simply lacks the investigative and prosecutorial resources to pursue the myriad of complaints concerning patronage abuse which would necessarily follow an increasingly political public service. Even more importantly, it is naive to believe that all rank-and-file civil servants who are shaken down for political contributions will have the courage to come forward and complain of this and other forms of patronage abuses in the setting of what is certain to be an increasingly politicized public work place. In view of these realities, H.R. 3400 does not, as it claims, "restore" political liberties to federal civil servants. On the contrary, this legislation presents a very real danger of political repression to the ranks of federal civil service.

The purported "protections" against abuse in H.R. 3400 would be woefully inadequate. The prohibition against pressure on employees for political commitments and contributions extends only to supervisors, and only on federal property: nothing would prevent peer pressure, or soliciting contributions over lunch or after hours, and it is not inconceivable that a politically astute subordinate could exert political pressure on his or her boss. Few of us can so compartmentalize our lives that we could be strong party supporters on our own time, yet utterly impartial at the office.

These considerations alone justify our strong opposition to H.R. 3400. But, in addition to exposing public employees to political abuse, this bill would --

- Jeopardize public confidence in government.

The confidence of the public in the integrity and impartiality of the day to day operations of governmental action rests on the fundamental premise that the government operates in a fair and nonpartisan fashion. If rank-and-file federal employees were to engage in political affairs of a clearly partisan nature, this would have an immediate and devastating impact on the public's perception of a fair and nonpartisan system of government.

- Ignore the teachings of history.

The idea that a "politically responsive" federal civil service is more capable of serving the public good than a nonpartisan work force has been rejected by both the Legislative and Executive Branches for over a century. History reflects that the only way to insulate federal personnel against both overt and subtle forms of political pressure is to bar these employees from actively engaging in any type of partisan campaigning. This is precisely what the existing Hatch Act does.

- Place unrealistic demands on prosecutorial resources.

Past experience with the administration of federal laws designed to protect federal personnel against improper political influence indicates that relaxation of the rules against political activity by federal employees is likely to lead to an increase in political abuses. In our view, H.R. 3400 would create a climate conducive to the interjection of corrupting political influences into both the federal work place and the administration of federal programs. Moreover, the provisions of

H.R. 3400, which its authors contend would provide effective remedies for any abuse, would invite a flood of litigation by disgruntled employees or disappointed government contractors. It would require no more than the allegation that a raise, or promotion, or contract was denied as a "political reprisal," and not for permissible reasons, in order to state a claim in federal court. These cases would be very difficult either to prove or disprove. They would place additional demands on our already strained prosecutorial resources and could divert a number of employee grievance cases from less adversarial administrative dispute resolution processes to full-blown federal court litigation.

- Jeopardize the impartial administration of federal programs.

Many States do not have similar bars against political involvement by state employees. Indiana's infamous "Two Percent Club," which even today requires state employees to contribute two percent of their salary to the political party responsible for their employment or continued employment, is but one example of the sort of pernicious situation which exists in government agencies which do not have the benefit of protections such as the Hatch Act. The experience with the corrupt administration of the New Deal programs shortly before the Hatch Act was enacted graphically demonstrates what can happen to public administration when federal personnel are allowed to become active proponents of partisan causes. In all likelihood, repeal of the Hatch Act would return to the field of federal public administration the corrupt practices which existed prior to 1939.

- H.R. 3400 is not necessary.

H.R. 3400 rests on the erroneous theses that today's federal employee is politically repressed by the Hatch Act and that the Hatch Act bars federal employees from engaging in meaningful political activity. This simply is not true. The present Hatch Act allows federal employees to engage in a great variety of important political functions, to express themselves meaningfully on political issues and to play a voluntary role in our democratic process. They are permitted to --

- register and vote,
- contribute money to partisan campaigns,
- express their views in private and, to some extent, in public,
- run as independent candidates in partisan contests in certain jurisdictions,
- attend political conventions and rallies as spectators,
- assist in nonpartisan voter registration drives,
- campaign for or against nonpartisan referendum questions,
- participate as nonpartisan poll watchers or election judges,
- attend political fund raising functions,
- wear political buttons (generally) and
- participate in nonpartisan campaigns.

These are important and varied activities. The Act bars only a very narrow range of political conduct. Its prohibitions are clear, unambiguous, and concern only visibly partisan activities, such as --

- holding an office in a political club or party,
- soliciting or handling political contributions or organizing partisan fund raising activities,
- making speeches on behalf of partisan candidates,
- circulating partisan nominating petitions, and
- distributing partisan campaign material in an election.

In essence, the Hatch Act restrictions boil down to the single and salutary concept that federal employees, who are responsible for overseeing and implementing the nations's federal laws and programs, may not be active agents of partisan political camps. While that is a restriction of sorts, it is hardly an absolute prior restraint on political expression and/or association.

H.R. 3400 jeopardizes existing safeguards.

While adding no new weapons to the arsenal of federal statutes which criminalize corrupt political practices, the enactment of this bill -- in and of itself -- would create serious problems with respect to enforcement of existing federal criminal statutes. The problem arises because the bill seeks to allow voluntary political activity by the federal civil service and at the same time to provide adequate and effective protection for two classes of employees -- those who chose not to be politically active, and those who chose to be politically active for causes and candidates whose views are at variance with those of their supervisors. It is obviously difficult to both provide protection for some workers while allowing participation by others and, unfortunately, H.R. 3400 does not succeed in overcoming this problem. The bill attempts to address this dilemma by crafting a detailed and exact boundary line between permissible political activity on the one hand, and corrupt political practices on the other. In doing so, it creates tremendous problems of proof, both in the criminal setting as well as in a civil and administrative proceeding. I mention but one example of this.

Section 7323 of the bill prohibits a federal employee's use of official authority for the purpose of "intimidating. . .or attempting to. . .influence. . .any person to engage, or not to engage, in any form of political activity." This provision then goes on to specifically exempt from this prohibition any conduct "taken in order to carry out the duties and responsibilities of one's position." These terms are undefined, and are marked by ambiguity. For example, conduct which may -- or may not -- violate this provision could run the gamut from informal political discussions during coffee breaks to outright pressure on subordinates to "volunteer" to help in a political campaign. Whether or not such conduct amounted to an illegal act, or a criminal act, would depend on the subjective assessment of the subordinate employee, and would be difficult if not impossible to prove in court or in an administrative proceeding.

Of even more serious concern, however, is the fact that this proposed statute creates a specific statutory defense, i.e., that the supervisor was merely attempting to "carry out [his] duties and responsibilities." This defense would be raised in virtually every action brought against anyone for violating this provision. Even worse, this statutory defense is also likely to be raised in the setting of a federal prosecution under existing criminal statutes such as 18 U.S.C. §§ 601, 602, and 606 for corrupt political shakedowns. Proof in a criminal prosecution, as the Committee knows, must be beyond a reasonable doubt. The very existence of this statutory defense, when coupled with a newly legalized and highly politicized federal work force, would make our burden of proof insurmountable. Thus, H.R. 3400 would cripple our ability to prosecute corrupt patronage practices under existing federal programs.

Conclusion

The Federal Government today enjoys a civil service system whose impartiality and fairness are justifiably held in high regard. The present system affords federal employees substantial latitude to participate in critical aspects of our democratic political process along with other citizens. It prohibits only that small portion of actively partisan political conduct which history shows will lead inevitably to political intimidation and corruption detrimental both to the individual civil servant and to effective public administration. Congress should continue these essential protections by leaving the Hatch Act intact and abandoning H.R. 3400.

I would be pleased to respond to any questions from Members of the Committee.

DEPARTMENT OF JUSTICE ANALYSIS OF H.R. 3400

H.R. 3400 would repeal substantial portions of the Hatch Act, 5 U.S.C. § 7324 ("the Act"),1/ which forbids federal employees (and certain state employees whose positions are funded by federal grants) to engage in certain partisan political activities. While current law permits Federal employees to vote, express their views within certain limits, and contribute to campaigns, H.R. 3400 would authorize Federal employees to run for office in partisan elections, work in campaigns or in party organizations, endorse partisan candidates, and solicit funds.

Although the bill includes a number of provisions intended to ensure that any political activity is conducted off the job, and to prevent conflicts between official duties and political activities, we believe that, despite efforts of the bill's sponsors to guard against abuse, this legislation would almost certainly result in the unprecedented politicization of the federal civil service. This, in turn, would seriously jeopardize public confidence in government and increase demands on limited prosecutorial resources.

Of particular concern are provisions of H.R. 3400 which would restrict the ability of senior political appointees and presidential aides to engage in political activity. With respect to these individuals, the bill would impose far greater restrictions than currently apply under the Hatch Act. This would raise serious constitutional issues under Article II as well as the first amendment.

The Hatch Act

The Hatch Act forbids Federal employees to engage in certain partisan political activities. In brief, the Act prohibits employees to:

- run as a partisan candidate in an election for public office,
- hold an office in a political club or party,
- solicit or handle political contributions or organize partisan fund raising activities,
- make speeches or engage in other campaign activities to elect partisan candidates,
- circulate partisan nominating petitions, and

1/ The current text of the Act and relevant regulations are attached at Tab 1.

- distribute campaign material in a partisan election.

The Hatch Act currently permits employees to:

- register to vote and vote,
- contribute money to campaigns,
- express their views in private and in public (though not in a concerted way to elicit support for a candidate or party),
- run as an independent candidate in certain partisan contests in designated areas with a high concentration of federal employees,
- attend political conventions and rallies as a spectator,
- assist in nonpartisan voter registration drives,
- campaign for or against political referendum questions,
- participate as a nonpartisan poll-watcher or election judge,
- attend political fundraising functions,
- wear political buttons (off duty or, subject to certain agency restrictions, on duty), and
- participate in nonpartisan campaigns.

The Act applies to federal employees, employees of the District of Columbia, and certain employees of state and local governments who administer programs primarily funded directly by the federal government. Before 1979, the Act was enforced by the United States Civil Service Commission. By the Civil Service Reform Act of 1978, the Commission's investigative and prosecutorial authority was transferred to the Office of the Special Counsel of the Merit Systems Protection Board. That office currently bears the responsibility of adjudicating formal disciplinary actions filed by the Special Counsel against alleged violators of the Act.

H.R. 3400

H.R. 3400, in effect, would repeal the Hatch Act.[2] It would permit an employee (subject to certain qualifications to prevent abuse of office or conflict of interest) to:

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[2] The text of H.R. 3400 is attached at Tab 2.

- run for office in a partisan election,
- hold office in a political party,
- distribute partisan campaign literature and solicit votes,
- organize and participate in political meetings,
- publicly endorse partisan candidates and urge others to support them, and
- raise funds for partisan campaigns and parties.

All of these activities could be engaged in individually or collectively. Employees of an agency could form off-duty, off-premises political clubs and work together toward political ends. Federal unions also could engage in politics, though they would probably be subject to the same sort of restrictions on the use of members' dues as apply in the private sector.

Section-by-Section Analysis

Hereinafter, references to amendments that would be made by H.R. 3400 will be made not to sections of the bill but only to the provision of law that would be amended.

§ 7321. Political Participation

H.R. 3400 ignores the teaching of history. Section 7321 expresses the sense of Congress that employees should be encouraged to participate fully in the political process. This statement of policy is precisely the reverse of the spirit of the Hatch Act, which is premised on the notion that active partisan political participation by federal employees is inimical to the interest of the public in effective and impartial administration of the laws.

The Hatch Act was passed in 1939, but its roots are even deeper. Thomas Jefferson was disturbed by the political activities of some of those in the Executive Branch of the Government, and caused an order to be issued stating in part that "[t]he right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice, but it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."3/

In spite of Jefferson's concerns about mixing partisan politics and routine federal service, the political spoils system was the rule until after the Civil War. In 1871, Congress authorized the President to establish a civil service of federal employees.4/ This was followed by the Civil Service Act of 1883, known as the Pendleton Act,5/ which in Rule 1 declared that "no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service" and that "no person in said service has any right to use his official authority or influence to coerce the political action of any person or body."6/

Problems with political activity continued, and the Civil Service Rules were frequently revised. Finally, the experience of the 1936 and 1938 elections convinced Congress that the prohibition against taking an active part in political management and campaigns should be extended to the entire federal service.7/ The bill introduced to remedy this problem became the Hatch Act, named for its main proponent, Senator Carl Hatch (D-NM).8/ It has been amended on several occasions, but not substantially changed.

The purpose of this brief history of the Act is simply to underscore the long-standing view that partisan politics is inappropriate and indeed harmful to the fair and impartial administration of the laws. Given this history, it is hard to view H.R. 3400 as the "restoration" of political rights its sponsors claim it to be.

3/ 10 J. Richardson, Messages and Papers of the Presidents 98 (1899), quoted in United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 557 (1973) (hereinafter "Letter Carriers"). In his opinion, which dismissed a constitutional challenge to the Act as a violation of the first amendment, Justice White presented a concise history of the Act, Id.,at pages 557-63, from which this discussion is largely drawn.

4/ 16 Stat. 514.

5/ 22 Stat. 403.

6/ 22 Stat. 404.

7/ Earlier Civil Service Rules had been confined to the competitive classified service. See Twenty-fourth Annual Report of the Civil Service Commission 104 (1908), cited in Letter Carriers, supra, 413 U.S. at 559.

8/ 53 Stat. 1147.

§ 7322. Definitions

The bill covers all federal employees, including those appointed by the President and confirmed by the Senate, whose political activities traditionally have been less restricted.[9] "Employees" covered by the act are defined to include all those employed or holding office in an Executive agency. Exceptions are made for the President, Vice President, employees of the General Accounting Office (GAO), and members of the uniformed service.

Through what may be a flaw in drafting, it is unclear whether this exception means that the President, Vice President, GAO employees, and members of the uniformed services are free to engage in any sort of political activity they choose, unrestricted by any of the prohibitions in this bill such as those against abuse of official position or on-the-job solicitation, whether they would be covered by the provisions of the current Hatch Act, or whether they would have no political "rights" at all -- not even those, such as the right to run in nonpartisan elections, presently guaranteed by the Act. Assuming that the intent of the bill's sponsors is to continue to restrict the political activities of these groups, these exceptions could be construed as a tacit admission that really important activities, such as those performed by the GAO and the military, would be jeopardized by permitting unrestrained political activity, and therefore that there are dangers of abuse inherent in the new, unrestrained scheme proposed in H.R. 3400.

This section is all the more confusing because, whatever is meant by the exemption, it apparently applies equally to the President and Vice President, in addition to GAO and the military. It is hard to imagine Congress forbidding the President to engage in all forms of partisan political activity: an incumbent would be forbidden to run for a second term, or the Vice Presi-

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9/ Presidential appointees are subject to the Hatch Act, but the rules are slightly different. See discussion of constitutional questions, pages 12-15 *infra*.

Agencies and departments within the Executive Branch may adopt more stringent rules for their own employees. The Department of Justice, for example, holds even its presidential appointees to the standards which apply to the rank-and-file, reasoning that the public's faith in fair and impartial law enforcement requires them to shun every appearance of partisan politics. *See* Memorandum from Attorney General William French Smith to all Department of Justice Offices, Boards, Divisions, and Bureaus, February 13, 1984 (advising *all* Department of Justice employees, even those exempt from the Act, to refrain from participating in partisan politics).

dent to run for President. On the other hand, it is equally difficult to consider a U.S. Army General in charge of NATO forces being visibly affiliated with, perhaps even an important official of, the opposite political party of his commander-in-chief. While these arguments may seem extreme, they are simply the product of a literal reading of the language in the proposed legislation, and are here set forth to illustrate some of the problems posed by this bill.

Another disturbing aspect of the bill is the extremely broad definition of "candidate" in § 7322(2). A "candidate" is defined as any individual who seeks nomination for election, or election, to any elective office, whether or not the individual is elected. An individual shall be considered to seek nomination or election if he has taken the action required to qualify for nomination or election, or received any political contribution other than personal services, or made any campaign expenditure or consented to another receiving any political contribution or making any expenditure in his behalf.10/ Since a number of privileges, such as the right to take leave without pay or use accrued annual leave, or even to conduct campaign activities in government offices under certain conditions, attach once an individual is deemed a candidate, this broad definition could permit individuals without much effort or commitment to invoke the special privileges and protections of this law.

§ 7323. Use of official influence or official information; prohibition.

Federal employees would continue to be prohibited to abuse official influence or information or to use coercion for political purposes, and would be subject to penalties for violations.11/ This section is intended to give the impression

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10/ This definition of "candidate" conflicts with the definition in the Federal Election Campaign Act, 2 U.S.C. § 431(2). Among other things, H.R. 3400 omits the $5000 threshold on contributions, which would make it substantially easier for an employee to invoke a candidate's privileges and protections under H.R. 3400 than under current law.

11/ These provisions would add nothing to the current body of federal law which criminalizes the political abuse of federal personnel and programs. See, e.g., 18 U.S.C. §§ 595, 598, 600, 601, 602, 603, 606, and 607. In fact, certain activities which are federal crimes under current law would be decriminalized if H.R. 3400 were enacted. For example, 18 U.S.C. § 602 makes it a crime to solicit, and 18 U.S.C. § 607 makes it a crime to make, any prohibited political contribution. This dual provision is intended to assure that employees are doubly shielded from this type of abuse. The exceptions to the prohibition against solicita-

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that any undesirable conduct which might result from allowing employees to engage in partisan politics can effectively be prevented by statutes and regulations specifically tailored to forbid those acts.

However, this section is marked by ambiguity, and, as written, would be virtually impossible to enforce. "Official authority or influence" is nowhere defined, although its exercise for the purpose of "interfering with or affecting the results of any election" or actual or attempted "intimidating, threatening, coercing, commanding, [or] influencing" is forbidden in § 7323(a)(1), (2). This type of conduct could run the gamut from informal political commentary during coffee breaks to outright pressure on subordinates to "volunteer" to help in a campaign. Whether or not such conduct amounted to an illegal act would depend on the subjective assessment of the employee who brings the charge, and would be difficult to prove in a court or administrative hearing.

The abuse of "official information" is forbidden in subsection (b), but an exception may be invoked if the "official information" in question "is available to the general public." "Official information" is nowhere defined. Moreover, there may be circumstances in which the government official has access to relevant, "public" information collected in a more manageable format for government use. Although it is unclear whether H.R. 3400 would permit the use of public information compiled for government use and at government expense, access to such information could be a clear advantage to a candidate. For example, an official at the Bureau of the Census running for office, or managing another's campaign, could enhance his (or his candidate's) chances at the polls through his easy access to relevant statistics which, although available to the public, are not easy to collect and analyze independently or are very costly to acquire. This individual also might be inclined to devote his energies to those projects in which he is officially involved which might be helpful or useful to his political ends.

Employees also might be subject to pressure from others involved in campaigns to divulge useful information. Although the rules are intended to prohibit such activities, most people are not capable of compartmentalizing their lives to the extent that they would be able, for example, to seal off their extensive knowledge of foreign trade negotiations during the hours that they are actively involved in campaign strategy for a candidate interested in trade issues.

11/(...continued)
tion in § 7324 would make enforcement of these criminal statutes, most particularly proof of intent, extremely difficult. This conflict could not easily be remedied through conforming amendments since it goes to the very heart of H.R. 3400.

Section 7323(c) forbids either promising to confer or conferring any benefit, or threatening to effect or effecting any reprisal, or taking or recommending any personnel action through exercise of official authority or influence. This section could open the floodgates to endless litigation both by disgruntled federal employees and disappointed contractors or grant applicants. For example, any employee who is passed over for promotion by a supervisor allied with a political party different from his own could allege that it was an illegal political "reprisal." In the case of those outside government, subsection (c)(1), by specifically including the "deprivation of any compensation, grant, contract, license, or ruling" under the heading of reprisals would invite every disappointed contractor, grant applicant, radio station owner, exporter, or anyone else outside the government with a colorable claim of "political discrimination" to come into court. The opportunities for making such claims would presumably be boundless, since any number of the federal officials and employees with whom these private contractors or applicants dealt could be avowed activists in their chosen political parties. Further, it is unclear in either case whether the officials or employees would be sued in their individual capacity or in their official capacity, or both, and whether the government would stand ready to indemnify them for damages assessed against them, or carry the expense of their defense.

Not only could those who failed to receive the desired government benefit sue, but those who alleged that another contractor or applicant received the contract, grant, or license as a political benefit would wind up in court. Proving or refuting such claims not only would be difficult, but would so expose the politicized nature of the federal bureaucracy as to erode any confidence remaining in the general public. Subparagraph (d), which asserts that "[n]othing in this section shall be considered to apply with respect to any actions if, or to the extent that, such actions are taken in order to carry out the duties and responsibilities of one's position," would do nothing but compound the problem of proof of political intent in these lawsuits, since the language of that section does nothing more than outline the defense or counterclaim that each federal defendant would assert when sued.

§ 7324. Solicitation; prohibition.

Solicitation of political contributions or votes in the workplace or with government contractors would still be forbidden. However, § 7324 is curiously limited to prevent only solicitation by supervisors of their subordinates, and arguably would permit employees to solicit funds on the job from their supervisors, their peers, or employees of other offices or divisions within their agency. Coercion is not dependent on hierarchy, and it is entirely conceivable that an employee who is a candidate in a state election might "suggest" that his supervisor, who resides in the same area, contribute to his campaign in order to preserve other interests in his neighborhood. The prohibition against solicitation does not apply outside government rooms or buildings, so presumably solicitation for campaign funds could take place over lunch outside the building. As presently drafted, the prohibitions against solicitation of either votes or money would not apply at all to individuals in government service who do not receive their salary from Treasury funds. There are entities in the federal bureaucracy, such as the Board of Governors of the Federal Reserve System, whose employees are compensated from other sources. They presumably would be free to solicit political contributions or votes on the job.

The prohibition against solicitation likewise extends to government contractors, entities regulated by the agency in question, or others who have "interests which may be substantially affected by the performance or nonperformance of the employee's official duties." § 7324(b). However, the following provision would require the Special Counsel of the Merit Systems Protection Board to prescribe regulations that would exempt friends and family from the statute, on condition that the employee recuse himself from official activities which involve the donors. This could lead to situations which would have every appearance of impropriety. For example, an employee at NASA could accept a contribution from a "good friend" who happens to work for an aerospace contractor on the sole condition that he recuse himself from official activities involving that contractor. Given the extremely broad definition of "candidate" in § 7322(2)(b), the bare acceptance of the "contribution," without more, could mean that the NASA employee qualifies as a candidate. Nothing would prevent that employee from passing good words along to his colleagues about the contractor -- the bill requires only that he recuse himself from official activities. For a Congress which only recently passed strict new rules under the Ethics in Government Act, and proposes to expand post-employment prohibitions for former government employees, to consider authorizing activity that is hard to distinguish from outright bribes and kickbacks is truly astonishing.

§ 7325. Political activities on duty, etc.; prohibition.

Section 7325 of the bill would prohibit political activities while employees are engaged in official duties, but it, too, is riddled with exceptions. The prohibition would apply only within federal buildings, so employees at lunch outside the building would be unrestricted. A far more disturbing exception appears in subsection (b)(1), which provides that "[a]n employee * * * may engage in political activity otherwise prohibited * * * if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States." Applied literally, this would permit a member of the Board of Governors of the Federal Reserve System to conduct a Senate campaign from his Washington office, since the Treasury does not pay the bills for the Federal Reserve. Depending on how strictly associated costs are defined, one could conceive of candidates for political office holding rallies in auditoriums like the one in the Commerce Department. Because this bill would include associations of employees as well as individuals, this section leaves open the possibility that an agency-affiliated political action committee (PAC) would be free to hold a partisan meeting in the agency's auditorium if the PAC reimburses the Treasury for the use of the room.

Curiously, subsection (b)(2) of § 7325 provides that the prohibition against engaging in political activity during working hours would be extended to employees on government-related travel or working beyond normal hours, and would apply to employees of the Executive Office of the President and to senior officials in the Executive Branch who are subject to Senate confirmation, and to most policy-makers. This, in effect, would restrict the political activities of senior Administration officials even more than the present Hatch Act, since under existing rules, many of those officials may travel and accept speaking engagements that might be considered political in nature incidental to official travel in behalf of the Administration they serve. The opposition would be freer to engage in political activity than the party currently occupying the White House.

§ 7326. Candidates for elective office; leave.

Section 7326, which provides for leave for employees who wish to run for office, is unduly generous at taxpayer expense. Employees who wish to present themselves as candidates in partisan elections are entitled to leave without pay during their candidacy, and also may use accrued, paid annual leave for that purpose. This would permit an employee to retain certain benefits, such as job security, pension, and insurance benefits, which he enjoys as a member of the federal payroll. The only condition upon which grant of leave may be denied is "if the exigencies of the public business so require." § 7326(c). A denial could surely be challenged as a political reprisal under § 7323(c). Similarly, employees may not be required to take leave and may continue with their federal jobs "unless the activities relating to the candidacy interfere with the employee's performance of the duties of the position." § 7326(d). A finding by a supervisor that an employee's campaign is adversely affecting his work could trigger a political reprisal case just as surely.12/

12/ One could argue that the supervisor would even be forbidden, by the terms of the Act, from even discussing the matter with the employee. Section 7323(a) forbids not only "intimidating, threatening, coercing, and commanding" but also "influencing." If a supervisor were to suggest to an employee that his campaign was taking too much time away (continued...)

An employee who is granted leave without pay for an extended period, or who takes accrued annual leave, may not be replaced by another worker and has the right to return to his former employment. Under the bill, in theory, an entire workforce could choose to engage in a campaign, leaving the business of the agency or department unattended. The prohibitions in § 7323 would make it very difficult for supervisors to deny requests for leave, and the absent workers could not be replaced. No distinction is made between essential and non-essential personnel. A large contingent of the local park rangers could take leave in order to work on a campaign and neglect the operation of a national park. A politically active local U.S. Attorney's office could cease to prosecute criminals for the duration of an election. Any attempt to grant leave to one employee but deny it to another would invite a political reprisal suit. Even more problems could result from candidates refusing to take leave during a campaign. Having an FBI special agent or the director of the local IRS audit office as the campaign manager for one party's candidate might cause genuine concern to that candidate's opponents and to the general public.

Moreover, an agency would have no ability to restrict the political activities of even the most sensitive of its employees. For example, the Department of Justice has adopted an agency policy requiring all employees, even presidential appointees, to observe all of the requirements of the Hatch Act. Under H.R. 3400, the Department would have no means to prevent, for example, the head of the Criminal Division or a Deputy Solicitor General from running for the Senate or serving as a party national committeeman, or as a national party officer. Other agencies, such as the Central Intelligence Agency and the Departments of State and the Treasury, would surely have similar concerns.

Application of H.R. 3400 to Senior Presidential Appointees: Constitutional Issues

Those provisions of the bill which would limit the ability of senior political appointees and presidential aides to engage in political activity pose grave constitutional problems. H.R. 3400 virtually erases the important distinction between political appointees and other federal employees that has long

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12/(...continued)
from the job, the employee could assert that the supervisor was "attempting to influence" him not to engage in a form of political activity. Even if the supervisor discovers that the employee is engaging in political activity which is proscribed under the bill -- for example, using an office photocopy machine to copy campaign literature -- any attempt to bring that infraction to the attention of the employee might be viewed as a violation.

been recognized in the Hatch Act. Under current law, senior presidential appointees and presidential aides are excepted from the Act's prohibition against taking an active part in political management or political campaigns.13/ New § 7323(a) would extend to all employees, including these officials,14/ a prohibition on using their official authority or influence to affect the result of an election. §7323(b) would prohibit them from using official information for any "political purpose," unless the information is available to the public. While these limitations are at least arguably narrowed by subsequent provisions of this section,15/ they nonetheless appear to place substantial new limitations and

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13/ See 5 U.S.C. § 7324(a). Under this section, an executive branch employee may not "use his official authority or influence for the purpose of interfering with or affecting the result of an election," and may not "take an active part in political management or in political campaigns." Excepted from this ban on participation in partisan political activity are employees paid from the appropriation for the Office of the President, the head or assistant heads of executive and military departments, and presidential appointees who "determine[] policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws." 5 U.S.C. § 7324(d)(1)-(3). The President, however, enjoys broad discretion to prohibit activities of these employees which he deems improper. See 5 U.S.C. § 7322. We believe that such discretion, at least in the absence of an extremely detailed statutory code of conduct, is both necessary and appropriate, for all use of governmental influence is "political" in some sense.

14/ See discussion of § 7322, pages 5-6 supra. The term "employee" is defined to include "any individual, other than the President and the Vice President, employed or holding office in" an executive agency, but not members of the uniformed services. That the term "employee" is intended to include presidential aides and high level political appointees is made clear in proposed § 7325, which qualifies that section's general prohibition on engaging in political activity while on duty for presidential aides and high level political officials.

15/ Section 7323(c) defines "use of official authority or influence" to "include" the promise to confer a benefit or the taking of any personnel action, by inference indicating that it means more than this. On the other hand, § 7323(d) provides that the section shall not apply to actions taken "in order to carry out the duties and responsibilities of one's position," which, if construed with the requirements of Article II in mind, could swallow up the prohibition entirely.

intolerable legal limits on the permissible political activity of presidential appointees.

Of perhaps even greater concern, § 7325 would place a sweeping restriction on the ability of senior presidential aides to engage in "political activity" while "on duty." The term "political activity" is nowhere defined in the bill.16/ This provision purports to apply equally to all employees, but since senior political appointees are "on duty" twenty-four hours a day, the restriction would have a far greater impact on them than it would have on employees whose duty hours are limited.17/ Here, too, the bill's restrictions on senior presidential aides are unprecedented.

The bill's attempt to restrict the President's ability to rely upon his aides and appointees to implement his political program raises the gravest questions under Article II of the Constitution. Depending upon how the vague term "political activity" is defined, the bill would to a greater or lesser extent impede such aides and appointees in their ability to carry out the decisions for which the President, as the politically accountable head of the executive branch, is alone responsible.

These restrictions may interfere with the ability of executive branch officials to communicate with the people on behalf of the President. Article II of the Constitution necessarily restricts Congress from interfering with the President's ability

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16/ Under current law, employees are barred from "tak[ing] an active part in political management or in political campaigns." See 5 U.S.C. § 7324(a)(2). We construe this formulation as limiting prohibited activities to those directly related to partisan election campaigns, or the organizations whose business it is to secure the election of their party's candidates. By contrast, the term "political activity" is susceptible to a much broader interpretation, and could be extended well beyond the campaign context to include any matter that is, at the moment, deemed to have some "political" ramifications.

17/ We take little comfort from the fact that this prohibition does not apply in the case of high level appointees and presidential aides if "the costs associated with that activity are not paid for by money derived from the Treasury of the United States." See § 7325(b)(1). This qualification is of very uncertain value given that appointees salaries are paid by the Treasury, and given that a wide variety of official activity of these appointees might be regarded as "political." There is, for example, no suggestion in the statute that this term was intended to include only the kinds of partisan campaign activities for which appropriated funds may be unavailable under existing law.

to explain the decisions which are entrusted to him by the Constitution, even if these explanations involve an activity commonly understood to be "political."18/ Accordingly, Congress may not constitutionally restrict the President's ability to communicate with the people he represents 19/ through those he has chosen to assist him in this regard.20/

18/ Under Article II, the President is constitutionally required to "take care that the laws be faithfully executed." U.S. Const. Art. II, § 3. It would be impossible for the President to perform this task if he could not communicate with those whose actions are governed by the laws. Moreover, the President is required by Article II to "give the Congress information on the State of the Union, and recommend to their Consideration such measures as he shall judge necessary and expedient." U.S. Const. Art. II, § 3. The President obviously could not give effect to recommendations unless he and his senior aides could explain them to the people.

19/ Supreme Court precedent establishes that Congress may not interfere with the President's ability to carry out his constitutional responsibility to execute the laws. See, e.g., Hart v. United States, 118 U.S. 62 (1886); United States v. Klein, 79 U.S. (13 Wall.) 128 (1872), holding unconstitutional congressional attempts to interfere with the President's pardon power. Even when Congress acts pursuant to its appropriations power, its authority is not absolute. Congress may not, for example, use its appropriations power to establish a religion, Flast v. Cohen, 392 U.S. 83, 104-105 (1968), or to diminish the compensation of federal judges. United States v. Will, 449 U.S. 200 (1980). By the same token, Congress' appropriations authority may not be used to intrude upon the President's Article II powers.

20/ The President, of course, "is a representative of the people, just as the members of the Senate and of the House are." Myers v. United States, 272 U.S. 52, 123 (1927). Indeed, "on some subjects . . . the President, elected by all the people, is rather more representative of them all than are the members of either body of the Legislature, whose constituencies are local and not country wide." Id. Because of his unique position as the only elected official with a truly "'national' perspective," INS v. Chadha, 462 U.S. 919, 948 (1983), it is necessary to the independent power of the executive branch that the President be able to engage in a dialogue with the citizens of the United States. As a practical matter, however, the President would be unable to fulfill many of his constitutional duties if he were required to act personally in each and every case. Accordingly, in order to effectuate his constitutionally

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Moreover, the several purposes underlying the Hatch Act, which have sustained this statute against First Amendment attacks, simply do not apply to close presidential aides and high level political appointees. See, e.g., Letter Carriers, supra, 413 U.S. at 565-66 (Congress was justified in concluding that "substantial barriers should be raised against the party in power -- or the party out of power, for that matter -- using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns"); United Public Workers of America v. Mitchell, 330 U.S. 75, 98 (1947) ("Congress recognizes danger to the service in that political rather than official effort may earn advancement and to the public in that governmental favor may be channeled through political connections"). Accordingly, we believe that a serious First Amendment question would be raised by application of the restrictions proposed in H.R. 3400 to such appointees.

Finally, in addition to our constitutional objections, we believe that the bill's virtual eradication of the longstanding distinction between career civil servants and political appointees is seriously in error as a matter of policy. Since the first major steps in the civil service reform movement during the mid-nineteenth century, we have developed a stable system of bifurcated responsibility for the administration of the laws. On the one hand, we have the President, the Vice President, and a handful of federal employees, serving solely at the pleasure of the President, who are chosen to help him carry out his constitutional responsibilities and policy goals. On the other hand, we have a large, more or less permanent, corps of civil servants whose duty it is to offer impartial and professional service to whatever administration is in power at a given time. While there always has been, and always will be, some friction between policy-oriented political appointees and the standing bureaucracy, this bifurcated or composite system has worked remarkably well for a very long time. The distinction between policy decisions and professional judgment is well understood both within the government and by the public at large, as well as by the individuals who accept political as opposed to career positions.

Conclusion

In sum, this bill could lead to the unprecedented politicization of the federal workforce. In addition to the specific concerns outlined above, the overall effect on the general public's confidence in the fair and impartial administration of the laws should not be overlooked. If it appears that a

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20/(...continued)
protected ability to communicate with his constituency, he must be permitted freely to employ the services of his senior appointees and aides.

candidate of Party A has misappropriated funds, it will not inspire confidence to learn that the local U.S. attorney's office charged with investigating the allegation is headed by that candidate's campaign manager. If a federal agency's employees' PAC endorses a presidential candidate, and he loses the election, the public will wonder how faithfully that department will carry out the new President's programs. If an agency manager goes on record supporting a candidate who proves successful at the polls, and subsequently that agency manager receives a big promotion, it will make the public cynical. The head of the Federal Election Commission could be the National Chairman of one political party or the other. The list could go on and on. As the foregoing examination of its specific provisions demonstrates, the proposed safeguards against abuse will be inadequate and largely unenforceable. H.R. 3400 is an invitation to political corruption on an unprecedented scale. Although this is but a cursory analysis of the impact this bill could have on the federal civil service, the number and magnitude of the problems it reveals warrant serious consideration.

This discussion has exposed only the most obvious implications of H.R. 3400. If enacted, the bill could permit employees to run for office in partisan campaigns from the security of their federal jobs. It could open the door wide to the unprecedented politicization of the federal workforce, and invite torrents of "political reprisal" litigation by employees, government contractors, and grant applicants. Two principles central to the operation of the Executive Branch -- the nonpartisan administration and enforcement of federal laws, and the advancement in federal service based solely on merit -- would be extinguished. Safeguards against real abuse would be virtually unenforceable. The public's confidence in the impartial administration of federal laws and programs would surely fall.

Finally, the bill's extension of restrictions on the activity of senior political appointees and presidential aides raises grave constitutional concerns.

NATIONAL LEAGUE OF POSTMASTERS
OF THE UNITED STATES
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STATEMENT

OF

RON SWISHER

PRESIDENT

NATIONAL LEAGUE OF POSTMASTERS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ON

HATCH ACT REFORM

FEBRUARY 23, 1988

BY FEDERAL EMPLOYEES, **IT ALSO BARS FEDERAL EMPLOYEES FROM VOLUNTARY PARTICIPATION IN PARTISAN POLITICAL CAMPAIGNS.**

IT IS VOLUNTARY PARTICIPATION OF FEDERAL AND POSTAL EMPLOYEES IN POLITICS WHICH WE ARE HERE TO DEBATE TODAY. BELIEVE ME, THE NATIONAL LEAGUE OF POSTMASTERS DOES NOT WANT OUR MEMBERS TO BE SUBJECT TO COERCION OR IMPROPER SOLICITATION. WE ARE IN FAVOR OF PROHIBITIONS AGAINST POLITICAL ACTIVITY ON THE JOB, ON THE CLOCK, ON THE WORKSITE OR WHILE IN UNIFORM OR GOVERNMENT VEHICLES. WE ARE IN FAVOR OF STRENGTHENED PROTECTIONS AGAINST COERCION. IN FACT, IF ANYONE COULD SUGGEST WAYS TO IMPROVE HATCH REFORM COERCION PROHIBITIONS, WE WOULD BE DELIGHTED TO HEAR THEM. PERHAPS ENFORCEMENT OF A HATCH ACT REFORM BILL SHOULD BE DELEGATED TO THE JUSTICE DEPARTMENT RATHER THAN TO THE OFFICE OF SPECIAL COUNSEL OF THE MERIT SYSTEMS PROTECTION BOARD. THE LEAGUE OF POSTMASTERS IS DEFINITELY INTERESTED IN PREVENTING OUR MEMBERS FROM BEING COERCED.

WE DO NOT WANT TO "POLITICIZE" THE WORKPLACE. ALL WE WANT, ALL OUR MEMBERS WANT, IS TO HAVE THE SAME RIGHTS AS EVERY OTHER AMERICAN WHILE OFF THE JOB, OFF THE CLOCK, AND ON ONE'S OWN TIME.

WE ALL KNOW ABOUT THE CONFUSING AND SOMETIMES CONTRADICTORY TANGLE OF OVER 3000 ADMINISTRATIVE AND COURT RULINGS WHICH GUIDE HATCH ACT ENFORCEMENT. NONE COULD ARGUE THAT THE CURRENT SITUATION IS CLEAR, LOGICAL OR EASILY UNDERSTOOD AND ENFORCED. IF

NOTHING ELSE, A HATCH ACT REFORM BILL **MUST** CLARIFY IN LAYMAN'S TERMS EXACTLY WHAT EMPLOYEES CAN AND CANNOT DO, AND WHAT WILL HAPPEN IF THEY BREAK THE LAW.

FURTHER, IT IS QUITE OBVIOUS THAT CURRENT HATCH ACT RESTRICTIONS SIGNIFICANTLY CURTAIL THE POLITICAL FREEDOM OF FEDERAL EMPLOYEES. THE NATIONAL LEAGUE OF POSTMASTERS BELIEVES THAT HATCH ACT PROHIBITIONS ON THE FIRST AMENDMENT FREEDOMS OF SPEECH AND ASSEMBLY ARE UNCONSTITUTIONAL, DESPITE THE 1973 SUPREME COURT RULING, AND WE ARE FIRMLY CONVINCED THAT A MUCH LOWER LEVEL OF RESTRICTION ON VOLUNTARY POLITICAL ACTIVITY COULD ACCOMPLISH THE GOAL OF PREVENTING "POLITICIZATION" OF THE WORKPLACE.

TIMES HAVE CHANGED DRAMATICALLY IN THE FEDERAL SERVICE SINCE 1939. AT THAT TIME, LESS THAN 32 PERCENT OF A WORKFORCE OF 950,000 WAS UNDER THE MERIT SYSTEM; TODAY, 78.6 PERCENT OF A WORKFORCE OF ABOUT 3 MILLION IS UNDER THE MERIT SYSTEM. FOR ALL PRACTICAL PURPOSES, THE "SPOILS SYSTEM" OF POLITICALLY-DETERMINED JOB APPOINTMENTS AND PROMOTIONS IS DEAD, REPLACED BY A PROFESSIONAL CIVIL SERVICE WHERE OPEN COMPETITION FOR POSITIONS AND PROMOTION ON MERIT AND SENIORITY DOMINATE. THE NATIONAL LEAGUE OF POSTMASTERS IS FIRMLY IN SUPPORT OF THE MERIT SYSTEM AND DOES NOT SEEK TO RETURN TO THE DAYS OF POLITICALLY-APPOINTED POSTMASTERS. WE FAVOR CIVIL SERVICE PROTECTIONS AND WOULD NOT WANT POLTIICAL CONSIDERATIONS TO ENTER INTO APPOINTMENTS OR PROMOTIONS.

I AM RON SWISHER, PRESIDENT OF THE NATIONAL LEAGUE OF POSTMASTERS, REPRESENTING OVER 27,000 POSTMASTERS NATIONWIDE. I ALSO REPRESENT OVER 40,000 FEDERAL AND POSTAL EMPLOYEES ENROLLED IN THE POSTMASTERS BENEFIT PLAN.

I WELCOME THE OPPORTUNITY TO TESTIFY BEFORE THIS DISTINGUISHED COMMITTEE ON SUCH A VITALLY IMPORTANT ISSUE AS HATCH ACT REFORM AND I THANK YOU, MR. CHAIRMAN, FOR HOLDING THESE HEARINGS SO EXPEDITIOUSLY.

RATHER THAN GO INTO A LONG HISTORICAL ANALYSIS OF THE HATCH ACT AND WHY IT WAS ORIGINALLY PASSED, I JUST WANT TO MAKE A FEW POINTS ABOUT ITS ORIGINS. FIRST, I THINK THAT A CASE COULD BE MADE THAT THE FEW INCIDENTS WHICH OCCURRED IN THE 1936 AND 1938 ELECTIONS, WHICH DIDN'T EVEN INVOLVE CIVIL SERVANTS UNDER THE MERIT SYSTEM, WERE REALLY USED AS AN EXCUSE TO ACCOMPLISH SOME GOALS WHICH CERTAIN MEMBERS OF CONGRESS AND CERTAIN OUTSIDE INTEREST GROUPS HAD BEEN PUSHING FOR A LONG TIME. NAMELY, TO END THE THEN SO-CALLED "SPOILS SYSTEM" AND INSTITUTE A CAREER CIVIL SERVICE WHICH WOULD BE "INSULATED" FROM POLITICS; AND TO PREVENT PRESIDENT ROOSEVELT FROM CREATING A "POLITICAL MACHINE" WHICH WOULD INCREASE AND MAINTAIN HIS POWER "INDEFINITELY".

IT SHOULD BE REMEMBERED THAT THE HATCH ACT WAS PASSED HURRIEDLY, WITHOUT HEARINGS, WITHOUT AN EXTENSIVE INQUIRY, AND WENT MUCH FURTHER THAN WOULD HAVE BEEN WARRANTED BY JUST THE FEW INCIDENTS REPORTED. THE ACT NOT ONLY PROHIBITS COERCION AND SOLICITATION OF OR

STRONG POSTAL AND FEDERAL UNIONS HAVE ARISEN, WITH COLLECTIVE BARGAINING RIGHTS IN THE POSTAL SERVICE. UNION AGREEMENTS PROVIDE MUCH MORE PROTECTION FOR EMPLOYEES THAN THEY HAVE EVER HAD IN THE PAST.

THE MEDIA IS MUCH MORE PERVASIVE AND ALERT TO ANY HINT OF SCANDAL. ANY ATTEMPT TO CREATE A POLITICAL "MACHINE" OF FEDERAL EMPLOYEES WORKING TOWARD THE ELECTION OF PARTICULAR CANDIDATES ON GOVERNMENT TIME AND IN GOVERNMENT BUILDINGS IS REALLY UNTHINKABLE -- AND COULD NEVER GO UNDETECTED.

IN SHORT, THE TYPE OF COERCION WHICH MAY HAVE OCCURRED IN 1939 COULD NEVER OCCUR TODAY.

IN 1974, AS PART OF A CHANGE IN FEDERAL ELECTION LAW, RESTRICTIONS WERE LIFTED ON STATE AND LOCAL GOVERNMENT EMPLOYEES WHO HAD BEEN COVERED BY THE HATCH ACT IF THEIR POSITIONS WERE FUNDED WITH FEDERAL MONIES. THEY ARE NOW ALLOWED TO PARTICIPATE IN PARTISAN POLITICAL ACTIVITIES ON THEIR OWN TIME, OFF THE WORK SITE, BUT MAY NOT RUN FOR PARTISAN OFFICE. IN ADDITION, 41 STATES ALLOW THEIR EMPLOYEES TO ENGAGE IN POLITICAL ACTIVITY, AS DO MOST OF THE WESTERN DEMOCRATIC NATIONS. THERE HAS BEEN NO MASSIVE POLITICIZATION OF STATE AND LOCAL GOVERNMENTS, NO INVINCIBLE POLITICAL MACHINES CREATED, NO ARMY OF EMPLOYEES MARCHING TO THE TUNE OF SOME POLITICAL MASTERMIND, NO MAJOR PUBLIC OUTCRY. IN FACT, THERE HAVE BEEN NO SIGNIFICANT

INCREASES IN CHARGES OF COERCION OR IMPROPER ACTIVITY.

WHY SHOULD FEDERAL EMPLOYEES BE TREATED ANY DIFFERENTLY?

WHAT ARE THE OPPONENTS OF HATCH ACT REFORM SO AFRAID OF?

IS IT TRUE THAT, AS CONGRESSWOMAN PATRICIA SCHROEDER (D-CO), CHAIRWOMAN OF THE U.S. HOUSE SUBCOMMITTEE ON CIVIL SERVICE, HAS SAID, "THE HATCH ACT. . . WAS PASSED IN ORDER TO PROTECT FEDERAL EMPLOYEES FROM POLITICIANS. IT HAS BEEN RETAINED IN ORDER TO PROTECT THE POLITICIANS FROM FEDERAL EMPLOYEES"?

INDEED, MORE THAN ANY OTHER WORKERS IN AMERICA, POSTAL AND FEDERAL EMPLOYEES ARE PROFOUNDLY AFFECTED BY DECISIONS MADE BY CONGRESS, THROUGH THE POLITICAL PROCESS -- A PROCESS THEY ARE LARGELY SHUT OUT OF. THIS FACT HAS NEVER BEEN MORE APPARENT THAN IN RECENT YEARS, AS CONGRESS HAS MADE POSTAL AND FEDERAL EMPLOYEES THE WHIPPING BOY FOR ALL SORTS OF PROBLEMS WITH THE FEDERAL GOVERNMENT, AND "PUNISHED" US THROUGH A STEADY EROSION IN RETIREMENT AND HEALTH BENEFITS, AND, FOR FEDERAL WORKERS, IN SALARY.

PERHAPS THERE ARE THOSE WHO WOULD HAVE US CONTINUE TO PRESENT A TEMPTING, AND LARGELY HELPLESS, TARGET. HOWEVER, THIS IS HARDLY SUFFICIENT CAUSE TO DEPRIVE 3 MILLION PEOPLE OF THEIR CONSTITUTIONAL RIGHTS! THIS IS SURELY NOT REASON ENOUGH TO RELEGATE POSTAL AND

FEDERAL EMPLOYEES TO SECOND CLASS CITIZENSHIP, UNABLE TO PARTICIPATE IN THE POLITICAL PROCESS WHICH SO PROFOUNDLY AFFECTS THEIR LIVES.

THE NATIONAL LEAGUE OF POSTMASTERS IS STRONGLY IN FAVOR OF HATCH ACT REFORM WHICH WILL RESTORE TO POSTAL AND FEDERAL EMPLOYEES THEIR FUNDAMENTAL RIGHT TO FULLY PARTICIPATE IN THE AMERICAN POLITICAL SYSTEM, WHILE PROHIBITING ABUSE OF OFFICE, COERCION OR IMPROPER SOLICITATION. THE LEAGUE BELIEVES THAT VOLUNTARY POLITICAL PARTICIPATION BY POSTMASTERS AND OTHER FEDERAL EMPLOYEES CAN ONLY STRENGTHEN THE POLITICAL SYSTEM AND ADD GREATLY TO PUBLIC DEBATE ON CRUCIAL NATIONAL ISSUES. THE LEAGUE BELIEVES THAT IT IS TIME TO LIFT THE YOKE OF SECOND CLASS CITIZENSHIP FROM THE BACKS OF THOSE WHO HAVE DEDICATED THEIR LIVES TO SERVING THE AMERICAN PUBLIC.

WE STAND READY TO ASSIST THIS COMMITTEE IN CRAFTING HATCH ACT REFORM LEGISLATION TO ACHIEVE THESE OBJECTIVES AND WE APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY. THANK YOU.

Statement of the National Association of Postal Supervisors
to
The Senate Governmental Affairs Committee
on
The Reform of the Hatch Act

Mr. Chairman, Members of the Committee: I'm Rubin Handelman, President of the National Association of Postal Supervisors, an organization representing 45,000 mid-level managers in the United States Postal Service. I thank you for the opportunity to present the Postal Supervisors' stand on the Hatch Act.

My colleagues and I are firm in the belief that limitations on any citizen's political rights diminish our freedoms. That's why we are quick to oppose the Hatch Act as it now stands. We know, as you gentlemen must, that this 1939 law is in bad need of reform; therefore we support the Hatch Act Reform Bill HR 3400.

This reform would permit federal and postal employees to voluntarily engage in partisan political activities after work and on their own time. It would also strengthen protections to the public against political abuses and coercion of the work force. This would make clear what at present is not.

As you know, the Hatch Act was enacted in 1939 as an overreaction to coercion and kickbacks placed on federal employees and public assistance recipients. In short, it was designed to stop the spoils system under then-President Franklin Roosevelt.

Times and conditions have changed since then. The federal work force has expanded in size and comes under a system of merit protection. In 1939, given the unsophistication of the national media, the absence of employee protection agencies and smaller Congressional investigating staffs, the Hatch Act was a useful and even good law. Indeed, we approve and endorse the strengthened provisions of HR 3400 which protect employees from political coercion. It becomes very clear what you can and cannot do as an activist in the federal and Postal Service. The current law as it stands, however, does not really protect us. It silences us.

President Reagan himself says that reform would,"politicize the civil service and reduce public faith in government." This from a man who'll go down in economic infamy for Black Monday and the lessons of Reaganomics which give tax breaks to big business so they can reap imports from overseas investments! But never mind the President's usual confusion. More on that later. Let's look at the irony of the situation: more and more short term political appointees from this most partisan of administrations make the key decisions affecting the country. Career civil servants are left with the worst of both worlds. They cannot aspire to positions of real power in the government and they cannot be effectively involved in the political process which selects those who do exercise real power. So here we have a situation where the last two presidents were able to campaign against the federal government while the targets of those campaigns-- federal and postal employees --were unable to campaign for the presidential candidate of their choice.

Mr. Reagan has also said,"We do not want to risk a situation in which federal employees believe that their advancement depends upon espousing particular views, perhaps the political views of their superiors." This view is childishly naive. Even in the most politicized agencies, who can imagine any such coercion by a supervisor? How long would it be in 1988 before such political coercion appeared on the front page of the New York Times, the Washington Post, and become a feature story on 60 Minutes? How many phone calls to Congressional offices would need to be made before you gentlemen would begin an investigation? Wouldn't that supervisor be hauled up here and made to answer the charges? It takes no imagination to see that such a government supervisor, using such tactics, would also hurt the campaign he or she was trying to support in the first place.

Let's be very clear about this: Hatch Act Reform is not a federal nor Postal Service issue nor is it a Democrat or Republican issue. It is an issue of political freedom and individual liberty. As presently written, the law is unclear, overly broad, and is a patchwork quilt of over 3000 administration rulings causing contradiction and confusion. The harsh penalties discourage political activity when you aren't sure what's legal or not.

Federal and postal workers may speak publicly on political subjects but not at political gatherings; they may attend a political convention but not serve as a delegate; they may sign a nominating petition, but not circulate it, etc.,etc.. This confusion results in a chilling effect and discourages even the limited participation allowed under the law. A similar chilling effect is achieved when government employee leaders are prosecuted under the Act as in the cases last year against three union Presidents. Since these men were already on leave without pay from their federal jobs, this shameful act must be interpreted as hypocritical and ironic indeed! Or perhaps it was just coincidence that the three unions supported Mondale over President Reagan in the '84 presidential elections? The president can only point his finger at a mirror if he wants to rebuke someone for practicing political coercion and intimidation.

At a time when less than 60% of the eligible voters choose to cast their ballots, our country can ill afford to deprive society of the energy and ideas of people who want to be involved, especially those who devote their lives to government public service. Add to this the fact that most Western democracies allow government employees to engage in partisan political activities and that many states have broader political freedom for state and local employees than are now enjoyed by federal and postal workers.

Make no mistake-- there are many difficult issues facing this Congress: Hatch Act Reform is not one of them. It costs nothing. Indeed, it would save money by eliminating the investigation, prosecution-- I would say harassment --of government and postal employees. HR 3400 merely restores to 3 million American citizens the political rights and freedoms upon which our nation is based.

Let's not make federal and postal workers feel like Eastern European counterrevolutionaries engaging in surreptitious and illegal political activity: making them peer worriedly over their shoulders and attempting to avoid the government's investigation. Instead, let's include civil servants in the political debate: after all, in the context of a political campaign who can better address the problems of the mail at the middle management level than the postal supervisors? Or, for that matter, on food poisoning than the Federal Meat and Poultry Inspector? Or veteran's health care than the doctors in the VA Hospitals? Or better address the quality of service from Social Security than those employees who answer the Social Security phones? The list can go on.

Freeing government and postal employees to contribute fully to our country's political debate can only benefit the entire nation. I urge the passage of HR 3400 by all those committed to clear, meaningful laws, justice, political freedom, and individual liberty. Again, we appreciate this opportunity to express our views on this important issue and I would be happy to answer any questions you may have.

STATEMENT OF
THE HONORABLE JOSEPH L. FISHER
CHAIRMAN, BOARD OF TRUSTEES
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

ACCOMPANIED BY
RAY KLINE, PRESIDENT
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

BEFORE THE
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE & CIVIL SERVICE
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON
PROPOSED CHANGES TO THE HATCH ACT
THE LAW GOVERNING FEDERAL EMPLOYEE POLITICAL ACTIVITIES

February 23, 1988

Mr. Chairman and Members of the Subcommittee:

Ray Kline, the president of the Academy, and I are pleased to have been invited to present the National Academy of Public Administration's views on proposed changes to the Hatch Act, the law that governs federal, and some state and local employee participation in political campaigns and elections. This is my first appearance before a congressional committee in my capacity as chairman of the Academy's Board of Trustees. It is a most appropriate occasion for doing so because the issue before this Subcommittee goes to the heart of the Academy's mission to promote excellence in public management at all levels of government.

Last November, the House of Representatives passed H.R. 3400, a bill whose purpose is to "... restore to Federal civilian employees ... their right to participate voluntarily, as private citizens, in the political process of the Nation, and to protect such employees from improper political solicitations." Mr. Chairman, we fully understand the very positive motivations of those who seek to broaden federal employee opportunities to participate in our Nation's cherished processes of government.

Revisions to the Hatch Act contained in the House-passed bill would permit federal employees to engage in the full range of partisan political activities when they are not on duty. Existing prohibitions would continue and penalties would be toughened for on-the-job partisan political activities, including the use of official influence or information for partisan purposes.

The Academy has considered this proposal carefully, first at a meeting of its Standing Panel on the Public Service last November shortly after House passage of the bill, second at a Board of Trustees meeting in January, and third at a smaller meeting two weeks ago of Academy members with an active interest in this issue. On all three occasions, for reasons I will outline below, we have concluded by an overwhelming majority that the adverse consequences of permitting broader federal employee participation in partisan campaigns and elections so outweigh the potential benefits as to make major change in the law at this time unacceptable.

Long History of Concern About Employee Political Activity

Political activity by federal employees has been a matter of concern since the early days of the Republic. President Thomas Jefferson, shortly after he was inaugurated, issued an Executive Order which called on federal officers to refrain

Potential of Pressure on Employees

It is reasonable to project that whatever partisan political activity is permitted off duty would, for many, become the expected behavior. Those in the civil service would soon come to believe that better assignments, promotions, and bonuses depend in part on partisan political activity. Equally destructive of morale and motivation would be a growing concern that not being promoted or given a preferred assignment was due to having engaged in political activity for the unsuccessful party or candidate or simply not having participated at all. This is no way to attract and retain the high quality staff needed in the civil service.

We believe that federal employees' involvement in partisan political activities would erode citizen confidence in the impartial administration of the laws. Many citizens would have a growing uneasiness about the objectivity of federal employees who oppose them in partisan political campaigns and who then are involved in investigations or decisions that might affect them adversely. This could occur in numerous situations dealing with taxes, eligibility for individual and corporate benefits, compliance with regulatory requirements, and award of government contracts. Public trust in the administrative institutions and processes of government could be dangerously undermined.

Finally, there is the matter of changes in administration from one political party to the other. Participation of civil service employees in partisan political activities would greatly increase the doubts of incoming administrations about the responsiveness of the career civil servants who opposed them during the campaigns. Even under the existing law, for many presidential appointees in both Republican and Democratic administrations, it has been hard to shake such doubts, even though they were almost always unjustified. Partisan political activity by career civil servants would create barriers of suspicion in political-career relationships that would be insurmountable in many instances.

Some argue for less drastic changes in the Hatch Act, such as permitting federal employees off duty to engage in the full range of partisan political activity only in connection with partisan elections for local government offices. Others argue for changes in the Act that would permit a full range of off-the-job partisan political activity by those federal employees whose duties do not include substantive responsibilities in any procurement, leasing, contracting, benefit, and employment activities. Aside from the extraordinary difficulty, if not impossibility, of making and enforcing these distinctions, it is unrealistic to

Counsel has a statutory responsibility for issuing advisory opinions, but as of February 10, 1988, the union had not received answers to these questions even though answers to such questions had been provided in December to one of our Academy members at his request.

This is an illustration of the need for the Special Counsel to be more forthright in facilitating authorized citizen participation in the political process. Interested federal employees should be free of doubts about how the existing law will be interpreted and applied. It is reasonable to assume that such uncertainties cause federal employees to avoid permitted political activity. They need to be resolved by improving advisory services, and if necessary, clarifying the law.

Striking the Proper Balance

On the fundamental issue of permitting federal employees to engage, while off duty, in the full range of partisan political activity, there is one clear consensus among supporters and opponents. It is that any change must recognize the need for a balance between the right of federal employees to participate in the political life of this nation and the right of the public to a competent, impartial, non-partisan, honest administration of the law. In this delicate balance, both the reality and the perception are vital considerations. The appearance of non-partisanship in the execution of law is essential to maintaining public confidence in the administrative institutions of government.

Under current law, federal employees, like other citizens, may register and vote, assist in voter registration drives not limited to one party, express opinions about candidates and issues, participate in campaigns where none of the candidates represent a political party, contribute money to a political organization or attend a political fundraising function, wear or display badges or stickers, attend political rallies and meetings, join a political club or party, sign nominating petitions, and campaign for or against referendum questions, constitutional amendments, and local ordinances. On the other hand, federal employees may not run for public office in partisan elections, campaign for or against candidates in partisan elections, collect contributions or sell tickets to political fund raising functions, circulate nominating petitions, or hold office in political clubs or parties. Having in mind what is and is not now permitted, we believe the existing system provides a reasonable balance.

from attempting to influence the votes of others and from participating in "electioneering." Other presidents issued similar directives. For example, President Hayes issued an Executive Order in 1877 which stated that federal employees should neither be required nor permitted to participate in political management.

President Garfield's assassination by a disappointed officer seeker led to passage of the Civil Service Act of 1883 which forbids: (1) coercion of federal employees for political funds and service and (2) use of "official authority or influence to coerce the political action of any person or body." However, it was President Theodore Roosevelt who laid down prohibitions that were later incorporated in the Hatch Act. His Executive Order 642, dated June 3, 1907, not only prohibited certain federal employees from using their official authority or influence to interfere with or affect the results of elections, but it also prohibited those in the competitive civil service from taking an active part in political management or campaigns. The Hatch Act, passed in 1939, extended these prohibitions to all federal employees, including those in the excepted service.

From time to time, these legislative limits on participation of federal employees in the political process have been called an infringement on the constitutional rights of freedom of speech and freedom of assembly. That question was settled when the Supreme Court held in 1973 that it is not a violation of the constitutional rights of federal employees to prohibit them from engaging in plainly identifiable acts of political management and political campaigning. (U.S. Civil Service Commission v. National Association of Letter Carriers, AFL-CIO.) However, this does not preclude changing the law and that is the purpose of the revisions contained in H.R. 3400.

Problems in Administration

Criticisms of the Hatch Act focus on its administration as well as on its denial to federal employees of certain political rights possessed by other citizens. During hearings held by the House Subcommittee on Civil Service in May 1987, uncertainty about the applicability of the current law in a variety of situations was cited by witnesses as having a chilling effect on lawful participation in political activity by federal employees and members of their families. For example, the head of a major union of federal employees identified nine questions typical of those received by the union for which answers are needed from the Special Council of the Merit Systems Protection Board. The Special expect such distinctions to permeate the public consciousness. Instead, the public will come to believe that all federal employees may engage in partisan politics and that political partisanship diminishes impartiality in the execution of the laws.

The Adverse Consequences Are Unacceptable

The adverse consequences of permitting civil service employees to go beyond the scope of present practices and engage in campaigning and other partisan political activities are simply so great as to make them unacceptable. Similarly, a situation which continues to discourage a large number of our citizens from lawful exercise of political rights is also unacceptable. Questions about interpretations of the Hatch Act need to be answered promptly and clearly so that Federal employees desiring to participate more fully in the political process can feel comfortable about doing so to the maximum extent permitted by existing law.

Accordingly, the National Academy of Public Administration opposes modifications to the Hatch Act that would broaden federal employee participation in partisan political activities.

Mr. Chairman, let me close by stating that there may come a time when certain changes should be made to the Hatch Act. There are provisions in the House bill on stricter enforcement, coverage of employees of the District of Columbia, and clarification of existing law that appear to have merit. However, a presidential election year, with all its attendant political pressures, is not the time for making these changes. We also believe certain useful actions can and should be taken before changing the law. We urge the Congress to do three things:

> First, insist that the Merit Systems Protection Board and its Office of Special Counsel adopt a more positive approach to clarifying and making known federal employees' existing rights to participate in the electoral process.
>
> Second, mandate vigorous, appropriate and consistent enforcement of existing sanctions against unauthorized activities. Where such activities are made known to the Special Counsel, the investigation should be prompt and fair, and the appropriate remedial actions should be actively pursued.
>
> Third, before any expansion of permitted political activity, find out

more about employee attitudes concerning the proposed changes. We know the views of those polled by the Senior Executive Association and the Federal Executive Institute Alumni Association (heavy majorities in both cases are opposed), but we do not know enough about the views of rank-and-file civil servants on this important subject

Mr. Chairman, this concludes my prepared statement. We would be pleased to respond to any questions you may have.

STATEMENT OF ANN MCBRIDE
SENIOR VICE PRESIDENT
COMMON CAUSE

Mr. Chairman, on behalf of Common Cause, I would like to express our appreciation for the opportunity to testify before the Committee on proposals to substantially revise the Hatch Act. We believe any proposals to change current law must be approached with great care.

Common Cause's interest in the Hatch Act goes back to the earliest days of our organization. We believe that the people's trust in a fairly and ethically administered government is an essential ingredient to our continued success as a democracy. Common Cause has worked with many Members of Congress and with thousands of citizens across the country to help ensure and promote the integrity of our governmental process.

Therefore, we are greatly concerned about efforts to substantially revise the Hatch Act. For nearly 50 years, through Democratic and Republican administrations, the Hatch Act has helped to ensure the impartial administration of government and to protect this nation's federal workforce by circumscribing federal workers' active participation in partisan politics.

Common Cause believes efforts to abandon the fundamental concept of an unpoliticized civil service are dangerous and unwise. With the basic restrictions on partisan political activity repealed, no procedural or other safeguards will be sufficient to protect against subtle forms of political favoritism or implicit coercion of federal workers.

The National Academy of Public Aministration has said, "It is reasonable to project that whatever partisan political activity is permitted off-duty would, for many, become the expected behavior. Those in the civil service would soon come to believe that better assignments, promotions, and bonuses depend in part on partisan political activity. Equally destructive of morale and motivation would be a growing concern that not being promoted, etc., was due to having engaged in political activity for the unsuccessful party or candidate or simply not having participated at all."

Similar concerns about the intangible -- and insidious -- quality of implicit coercion were described by historian Marjorie Fribourg. "You do not have to go after a worker with a club or threaten to have him transferred. All a boss has to do is be visibly more cordial to those who showed up at a fund-raising dinner or rally and the maverick gets the idea. Life in the office will be more pleasant if one fits in with the crowd politically. If 'great' assignments seem to go to the political conformist and 'lousy' ones to the apathetic, that does it. More and more staff members show their eagerness to perform chores for the party after hours. They can no longer get out of it by saying, 'I'm Hatched'."

In our view, without basic Hatch Act protections, there are no effective safeguards -- including those proposed in the House-passed bill -- that can adequately protect against coercion that is more likely to occur in a subtle than in a blatant way. Federal workers who face subtle pressure to take political action may not seek redress because proof would be difficult. Even if no coercion were intended, federal employees could easily get it into their heads that political activity on behalf of the party in power was the best way to assure career advancement. That path would surely lead to a demoralized civil service and an undesirable politicization of the federal bureaucracy.

In addition, repeal of the Hatch Act's basic protections would increase the potential for building a powerful political operation based on the use of government workers and would erase the narrow line between lawful administrative discretion and political favoritism. That temptation is already great, as indicated by the infamous "Federal Political Personnel Manual," drafted by President Nixon's Advisor Fred Malek. The Manual outlined a comprehensive plan for using the civil service for the "maximum political benefit." Noting with displeasure the civil service's "general insensitivity to political needs," Malek identified what he called potential patronage "resources" -- jobs, contracts, job subsidies, bank deposits, social need programs, public works projects, transportation, public relations offices, and the general execution of federal law.

It is important not to lose sight of the fact that federal workers do have the right under the Hatch Act to engage in substantial political activities and to exercise their basic rights. The 2.3 million federal employees covered by the Hatch Act may make partisan campaign contributions, be "rank and file" members of political parties, and engage in non-partisan political activities. Approximately three-quarters of local elections are non-partisan. Federal workers are barred, however, from participating in the most active levels of partisan political activities.

In contrast, the bill passed this past fall by the House of Representatives would allow federal workers to engage in any and all partisan political activities during off-hours. Civil service employees would be permitted to run as candidates in partisan elections, serve as officers of a political party, raise partisan campaign contributions, and administer political action committees (PACs).

The impartial administration of the law, and the appearance of impartial administration, will be severely undermined if the changes in the Hatch Act contained in the House-passed bill are enacted. A non-partisan, merit-based civil service cannot be maintained without a basic restriction on partisan political activity by federal workers. You can't have one without the other. Stripping the restrictions on partisan political activit by federal workers will open the door to implicit coercion against which there is no protection.

It takes little effort to imagine situations where the effect of a repeal of the partisan activity restrictions would be detrimental to the government's operation and would undermine public confidence in the decision-making process:

o An incumbent President seeks to enlist a large army of government workers in the President's campaign for re-election. What are the protections against the implicit pressures to participate? What kind of unfair advantages does this provide the incumbent?

o A supporter of an unsuccessful candidate seeks, but is not awarded, a government contract. The decision is made by a government department whose officials have participated in the campaign of the winner. How can the appearance of retribution or favoritism be avoided?

o A clerk at the local Social Security office or the local Veterans Affairs office goes door-to-door collecting signatures for a nominating petition. He is later accused of rejecting a benefit claim because the applicant refused to sign the nominating petition. What is the clerk's protection against such an accusation?

Concern about partisan political activity by federal employees goes back to the days of Thomas Jefferson, who wrote in 1801 that "it is expected that [a civil servant] will not attempt to influence the votes of others, nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."

More than a century later, President Theodore Roosevelt reiterated, "A man in the classified service has an entire right to vote as he pleases, and to express privately his opinions on all political subjects; but he should not take any active part in political management or political campaigns."

The Hatch Act was enacted in response to widespread reports of coercion of federal workers during the 1938 campaigns and to worries about the dangers posed by a rapidly expanding federal bureaucracy under President Franklin Roosevelt.

Some of the bill's proponents say that the time for these restrictions has passed. We disagree. It wasn't that long ago that Nixon Presidential Assistant John Dean asked in a memo, "...how can we use the available federal machinery to screw our political enemies?"

It is true that the current regulations governing administration of the Hatch Act are complicated. There may well be ways to clarify and simplify for workers the degree of participation which is permitted. Through these hearings, the Committee has an opportunity to explore in greater detail the administrative problems and complaints about the Hatch Act. How widespread are the complaints? What are appropriate remedies? How can these problems be addressed without undermining the integrity of the civil service? The House-passed bill is not the remedy; it is unnecessary, radical surgery.

We believe any efforts to modify the Hatch Act should focus on these administrative questions, carefully examining the body of regulations and rulings that represent a codification of the Hatch Act, rather than an abandonment of the Hatch Act's basic restriction on partisan political activity as proposed in the House-passed bill.

In 1973, the U.S. Supreme Court in United States Civil Service Commission v. the National Association of Letter Carriers upheld the constitutionality of the Hatch Act and wrote that "it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service." In upholding the constitutionality of the Hatch Act, the Supreme Court recognized the need to "arrive at a balance between the interest of the employee, as a citizen, in commenting upon matters of public concern and the interest of the government, as an employer, in promoting the efficiency of public services it performs through its employees."

Employment by the federal government is more than just a job. A federal employee is a public servant who is entrusted with serving the common good. It is reasonable to ask that workers refrain from actions that would cast doubt on that trust.

The Senior Executive Service Association and the Federal Executive Institute Alumni Association oppose the House-passed Hatch Act revisions. So, too, does the National Academy of Public Administration.

Common Cause believes a careful balance must be struck between an individual's First Amendment right of free speech and association, and the public's right to impartial administration of government. Removing the Hatch Act's basic restrictions would destroy this balance and lead to undesirable politicization of the federal bureaucracy.

Again, I thank you, Mr. Chairman, for the chance to present our views.

STATEMENT
on
HATCH ACT AMENDMENTS
before the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
for the
U.S. CHAMBER OF COMMERCE
by
C.A. HOWLETT

February 23, 1988

I am C.A. Howlett, assistant general manager of the Salt River Project in Phoenix, Arizona. As a member of the U.S. Chamber of Commerce's Public Affairs Committee, I am pleased to have the opportunity to testify on behalf of the Chamber and its nearly 180,000 members on proposals to amend the Hatch Act.

The Chamber supports the Hatch Act, which protects federal civil service and postal employees from undue political pressure and coercion, and believes that no law should be enacted to permit the solicitation of financial or any other form of support for political candidates and political or party organizations by such employees.

The Chamber specifically opposes enactment of House-passed H.R. 3400, the Federal Employees' Political Activities Act of 1987, now before this Committee.

The Hatch Act was passed 48 years ago to protect federal workers from political pressure by elected and appointed officials. The purpose was to separate the work force from the elected leadership. In much the same way that the civil service has protected federal employees from the "spoils system," the Hatch Act has protected these workers from exploiting their office or being exploited by others. It has been a benign barrier to politicizing the federal work force. The Hatch Act has allowed only nonpartisan political involvement by federal employees.

The Chamber has several concerns about amending the Hatch Act. These include the use of government positions to coerce contractors to contribute to candidates; the exertion of pressure on citizens dealing with the Internal Revenue Service (IRS); agencies that dispense grants or loans having undue influence over applicants; and, particularly, the potential abuse of the federal worker.

It is well known that exertion of political pressure upon and by the New Deal's Works Progress Administration, which became so politicized that the public rebelled against the resulting corruption, prompted the enactment of the Hatch Act in 1939. However, practices prohibited by the act were not unique to that era.

In 1801, President Thomas Jefferson viewed with dissatisfaction government employees "taking active parts in the election of public functionaries." While upholding the right of such employees to vote as qualified citizens, Jefferson said, "it is expected that he will not attempt to influence the vote of others, nor take part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it." Restrictions proposed by the Jefferson Administration were never implemented.

The Pendleton Act of 1883 established the Civil Service Commission (CSC) and provided that federal employees under the classified service were free from political assessment and politically motivated removal and were forbidden to participate in politics. The classified service over which the CSC then had authority constituted about 10 percent of the total executive work force.

In 1901, President Theodore Roosevelt issued Presidential Civil Service Rule No. 1, prohibiting all individuals in the classified service from taking "an active part in political management or political campaigns." Roosevelt was frustrated as a Civil Service Commissioner by the CSC's lack of enforcement authority over a system in which only 25 percent of the federal employees were classified, while the "spoils system" controlled appointments to 75 percent of all federal offices. This rule became law with the enactment of the Hatch Act in 1939.

In signing the Hatch Act into law, President Franklin D. Roosevelt said, "improper political practices can be eliminated only by imposition of rigid statutory regulations and penalties by Congress."

In 1973, the Supreme Court, in upholding for the third time the Hatch Act's constitutionality, declared, "it is in the best interest of the country, indeed essential, the federal service should depend on meritorious performance rather than political service. . . . "

Supporters of the bill are quick to mention penalties for misusing the new-found privileges that it would grant. The envisioned enforcement should be compared with the enormously difficult job of enforcing laws relating to sexual harassment. Innuendo and subtlety are extremely difficult to document.

Violations can be expected to occur, and large numbers may be undetected and unsolved. The American taxpayer will suffer because the productivity of the federal work force will suffer.

If the federal worker were truly disenfranchised as a participant in politics, Congressional reformation might be necessary. However, federal workers can actively participate -- the law only restricts partisan activity. Under the Hatch Act, federal employees may:

- join political clubs;
- contribute money to political candidates and organizations;
- sign nominating petitions;
- campaign for or against ballot propositions;
- attend political fundraising functions;
- wear badges or buttons;
- register voters;
- express opinions; and
- register and vote.

The major prohibitions of the Hatch Act are:

- soliciting campaign funds from fellow workers;
- using federal office for political purposes;
- taking an active part in partisan campaigns; and
- running for office on a partisan ticket.

Federal workers simply will not have the necessary protection from political harassment if the Hatch Act amendments are adopted. Therefore, if Congress enacts these changes, the Chamber believes that Congress should immediately establish a panel to determine the impact of these amendments on the operation of federal offices. Federal employees should be surveyed in a manner that insures anonymity to ascertain their views on the proposed changes prior to enactment.

President Ronald Reagan, in his 1988 legislative message, has urged opposition to any Hatch Act amendments:

> We do not want to risk a situation in which federal employees come to believe that their advancement depends on espousing particular views, perhaps the political views of their superiors. Neither should electoral campaigning be allowed to mar cooperation between the political appointees of the President and the civil service establishment, a cooperation crucial to good government.

In its analysis of H.R. 3400, the Department of Justice said:

> In sum, this bill could lead to the unprecedented politicalization of the federal workforce. In addition . . . the overall effect on the general public's confidence in the fair and impartial administration of the laws should not be overlooked. If it appears that a candidate of Party A has misappropriated funds, it will not inspire confidence to learn that the local U.S. attorney's office charged with investigating the allegation is headed by that candidate's campaign manager. If an agency manager goes on record supporting a candidate who proves successful at the polls, and subsequently that agency manager receives a big promotion, it will make the public cynical. The list could go on and on. The proposed safeguards against abuse will be inadequate and largely unenforceable . . . the number and magnitude of the problems [H.R. 3400] reveals warrant serious consideration.

In the October 12, 1987 Washington Post, a federal worker discussing office contributions of all types concluded, "Please Congress, don't add 'Give to the Party of your choice' . . . There are lots of emotional pitches to give, and I would rather work at the office and contemplate my political orientation in the privacy of my own home where I don't have to consider what my boss will think." One suspects that this person speaks for a large segment of the government work force.

To remove the protection of the Hatch Act would send the U.S. government back down the road of the "spoils system," "flower funds," and politicization of federal agencies. In the words of President Gerald Ford, "If this bill were to become law, I believe pressures would be brought to bear on federal employees in extremely subtle ways beyond the reach of any anti-coercion statute. . . ."

The Chamber knows no compelling reason to amend the Hatch Act. While it is true that there are certain restrictions on federal workers' political involvement, it is also true that they are a unique group of employees. Their job is the efficient operation of the federal government, with equal treatment of all taxpayers regardless of political persuasion. The Hatch Act amendments will remove protections from federal workers and from taxpayers.

Congress should act to strengthen our government by rejecting the Hatch Act amendments. Our federal workers need and want a harassment-free workplace. The American taxpayer deserves no less than top performance. The Hatch Act was passed to cure the serious problem of political coercion in the federal work force. H.R. 3400 would allow that problem to reemerge.

TESTIMONY OF

MORTON H. HALPERIN
DIRECTOR
WASHINGTON OFFICE

AND

ANTONIO J. CALIFA
LEGISLATIVE COUNSEL
WASHINGTON OFFICE

ON BEHALF OF

THE AMERICAN CIVIL LIBERTIES UNION

ON

PROPOSED REFORM OF THE HATCH ACT

BEFORE

GOVERNMENTAL AFFAIRS COMMITTEE
UNITED STATES SENATE

FEBRUARY 23, 1988

ACLU SUPPORTS REFORM OF THE HATCH ACT

Chairman Glenn and Members of the Committee:

It is my pleasure to come before you today on behalf of more than 250,000 members of the American Civil Liberties Union (ACLU). The ACLU strongly supports reform of the Hatch Act. We thank you for holding these hearings and allowing us to express our views on this most important matter.

Background

We have just celebrated the bicentennial of the signing of the United States Constitution, a wondrous document which ensures freedom for the individual, and for the minority against the majority. The flexibility and strength of this remarkable governance system have made the United States unique in the world. Nowhere else does such a heterogeneous and large population have such unfettered freedom of expression. Concurrently with the exercise of this freedom, we have the blessing of domestic tranquillity. Political opinion and dissent are fully expressed with the ballot not the bullet. The humblest citizen can criticize the President of the United States and work actively to replace him. This state of events is not at all commonplace in history. World history is replete with instances of repression and conflict and strictures on speech.

The American guarantee of freedom of speech is found in the First Amendment to the United States Constitution, which reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the

> right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment not only guarantees freedom of expression but also guarantees freedom of political expression and action. Indeed, active participation in the political process was a fundamental goal of the Founders -- and one of the chief reasons for the Revolutionary War. Prominent men and women risked everything, even their lives, because the British government excluded them from the political process.

The First Amendment is a fundamental right, occupying a place in our constitutional hierarchy reserved for those freedoms we hold most important. As a fundamental right, it may not be abridged except when there is a compelling state interest. The abridgment must be precisely and carefully drawn to preserve the state interest. As much as possible of the First Amendment must be left unfettered. As we shall show later, the Hatch Act must be changed because it impermissibly and unnecessarily infringes on the First Amendment.

The Hatch Act -- Legislative History

A study of the legislative history of the Hatch Act shows that it was enacted with little debate in 1939. There were no public hearings. Even this limited legislative history gives us some notion of the intent of Congress when passing the Hatch Act. The overriding concern of Congress was with Section 7324(a)(1) of the Hatch Act -- the use of a federal employee's official authority or influence to affect the outcome of an election. The official title of the Hatch Act was "An Act to Prevent Pernicious Political Activities."

Passage of the Hatch Act was seen as a response to reports of abuse of federal employees during the 1936 and 1938 elections. Senator Morris Sheppard of Texas, headed a special Committee on Campaign Expenditures and use of funds and found cases of political coercion mainly involving Workers Progress Administration (WPA) supervisors and employees.

> It is a matter of common knowledge in almost every community of the Nation the taxpayers' money appropriated for W.P.A. was used to coerce and intimidate needy men, women and children. Many of those in charge of this relief boldly insisted that voters change their party registration and vote for candidates favored by those in charge of the W.P.A. and if they refused, they were denied W.P.A. work or were discharged ... Tens of thousands of people receiving large salaries were rendering no service to the people. They were devoting their time in pernicious political activities ... as pointed out by the press, the National Grange, the Republican Party, and other groups, the Hatch bill solves this problem.[1]

The legislative history is replete with references to "taking the veil."[2] This was a shorthand reference to the right-privilege distinction. Until relatively recently, public employment was viewed by our courts as a privilege that government could bestow on its own terms. In return for the privilege of government employment, the government could demand that an individual give up certain rights. This theory, that government can condition public employment upon the waiver of first amendment rights has been thoroughly rejected by the Supreme Court, Connick v. Myers, 461 U.S. 138 (1981).

The Hatch Act passed Congress on August 2, 1939. It has been amended many times. The chief Hatch Act provisions can be found at 5 U.S.C. Secs. 7321-7327.

Hatch Act -- Provisions

The ACLU strongly supports a change in Section 9(a) of the Hatch Act, 5 U.S.C. Sec. 7324(a)2 which reads, in part, as follows:

> "An employee ... may not--
> (1) use his official authority or influence for the purpose of interfering with the result of an election; or
>
> (2) take an active part in political management or in political campaigns.
> For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited of employees in the competitive service before July 19, 1940 by determinations of the Civil Service Commission under the rules prescribed by the President."

There are over three thousand such administrative determinations.

The ACLU joins other organizations testifying before this distinguished Subcommittee in opposing coercion and supporting free speech. An employee should not be allowed to use his official position as authority or influence to affect or attempt to affect the influence of an election. This coercion is inimical to First Amendment rights and must not be allowed. Employers cannot use their positions of trust to intimidate workers or the public to conform to their political judgment. This is the very antithesis of free and robust expression of First Amendment rights. We wholeheartedly support the provisions of H.R.3400 that protect the worker from political coercion by other workers or by a supervisor.

The ACLU urges reform of Sec. 7324(a)(2) of the Hatch Act which prohibits an employee of the Federal government from taking an active part in political management or in political campaigns.

As written, and as applied this is a bad law, a "gag" law. The severe deprivation of freedom of speech stemming from this prohibition is neither justified by fears of political coercion nor necessitated by the desire for a neutral civil service.

The Hatch Act and the First Amendment

The First Amendment is a fundamental right of a free people. It stands at the pinnacle of rights cherished by Americans. The general standard for protection of speech is that it must be permitted unless a public danger is created by its exercise. This criteria does not permit the political sterilization of several million federal and postal workers in jobs ranging from janitorial to professional specialization simply for fear that coercion might be applied by superiors over subordinates to insist that they participate in partisan activity as the price of job advancement. The possibility that an employee could be coerced is not a public danger of a magnitude that justifies deprivation of speech, nor is the possibility of coercion eliminated by removing from all employees their rights of free expression, since advancement within the government is always a matter of discretion on the part of the employee's supervisor.

Let us analyze the Hatch Act according to the traditional "strict scrutiny" standard used in numerous cases.

Any statute regulating political speech must meet three criteria: (1) a compelling state interest must be at stake; (2) there must be a demonstrated need for regulation; and (3) the restriction must be narrowly drawn so as not to impose limitations greater than those necessary to protect the interest at stake.[3/]

Does the Hatch Act "Regulate" Speech

Assuredly, the Hatch Act deals with speech. Participation in the political process is at the very essence of what the First Amendment means by speech and what the First Amendment protects.[4/] The Hatch Act infringes very substantially on the First Amendment. The Hatch Act not only regulates speech, it prohibits speech by federal employees and workers. In this aspect, the Hatch Act is unique. If a federal employee or federal worker exercise rights that his or her fellow citizens routinely exercise, the federal employee will lose his or her job.[5/] Here are some examples of the political activities that are so "pernicious" Americans must be deprived of their livelihood if they engage in them. These examples are from the Office of Personnel Management.[6/]

> Recent pronouncements from the United States Office of Personnel Management, successor to the United States Civil Service Commission, interpret Section 9(a) to prohibit: (1) being a candidate for nomination or election to a national or state office; (2) becoming a partisan candidate for nomination or election to any public office; (3) campaigning for or against a political party or candidate in a partisan election for public office or political party office; (4) serving as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a partisan political club, or being a candidate for any of these positions; (5) participating in the organization or reorganization of a political party, organization, or club; (6) soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose; (7) selling tickets for or otherwise actively promoting such activities as a political dinner; (8) taking an active part in managing the political campaign of a candidate in a partisan election for public office or political party office; (9) working at the polls on behalf of a candidate or political party by acting as a checker, challenger, or watcher; (10) distributing campaign literature; (11) serving as a delegate, alternate, or proxy to a political party convention; (12) addressing a

> convention, rally, caucus, or similar gathering of a political party in support of or in opposition to a candidate for public office or political party office, or on a partisan political question; (13) endorsing or opposing a candidate in a partisan election through a political advertisement, broadcast, campaign literature, or similar material; (14) driving voters to the polls on behalf of a political party or candidate in a partisan election; or (15) initiating or circulating a partisan nominating petition.

In practice the trampling of first amendment rights goes even further. This Subcommittee has heard testimony from union members who have been told that the following were prohibited by the Hatch Act:

*A postal worker could not appear in a photograph contained in his wife's campaign flyer.

*A Social Security disability investigator could not comment in a union newspaper on which candidate he preferred after the union had heard all candidates speak.

*A worker was told he could not seek a post in a non-partisan election. He was also told he could not put a campaign sign in his front yard.

*Testimony was given concerning a prohibition of local union voter registration drives, once the International Union had endorsed a candidate.

Compelling State Interest

The compelling state interest advanced by the government is in a Civil Service governed by the merit system. In such a Civil Service promotion is based purely on merit. An employee could not be coerced into partisan political activity in order to advance within the civil service. We will assume arguendo that the state has an important interest in preferring advancement within its Civil Service to be based on merit and not patronage or coercion.

There Must Be a Demonstrated Need for Regulation

There was some showing of need for regulation. In 1939, almost 50 years ago, Sen. Sheppard of Texas showed that a few W.P.A. workers were coerced into voting a certain way. This abuse would still be dealt with in the legislation which this Subcommittee is considering. Under H.R.3400 it would be illegal to coerce workers into voting a certain way. A supervisor could not use his official position or influence to threaten or force workers to do his political bidding. Thus, the provisions of 5 U.S.C. Sec. 7324(a)(1) would remain in effect.

What about Sec. 7324(a)2 -- the part of the Hatch Act which has indeed been pernicious which prohibits an employee from taking an active part in political management or political campaigns? There is little, if any, record of abuse in this area. Indeed, Congress "unhatched" hundreds of thousands of state and local employees from this provision in 1975. The state and local employee is free to actively participate in political management and campaigning. Their freedom of speech and association has been restored for the most part. The ACLU is unaware of serious problems, creating a danger to the state, that were caused by this legislation.

In 1975 the Hatch Act was amended as it applied to State and local employees by essentially allowing all such employees to take an active part in political management or campaigns. In 1983 a study was done by the House Subcommittee on Civil Service entitled, "Changes Since 1975 in State Restrictions on Political Activities of State and Local Employees". Of the fourteen States cited as having changed their political activity restrictions, thirteen were found to have liberalized or reduced those restrictions and four States removed them altogether. In interviews with State officials conducted by the Subcommittee the following observation was made:

> "We solicited from State officials information on any other impacts or effects which may have resulted from the liberalized restrictions on public employees. Aside from an increase in political activity, no other effects were noted by officials we contacted, including any increase in the improper use of authority and coercive tactics by public employees."(p.8)

Based upon the findings of this study the overall negative repercussions of reducing political activity restrictions are minimal.

In United States Civil Service Commission v. National Association of Letter Carriers, 93 S. Ct. 2880 (1973), (hereinafter "NALC"), in a decision which the ACLU considers to be incorrect, the Supreme court upheld the Hatch Act limitations on the First Amendment rights of covered employees. The Supreme Court has not taken a strong position on whether these draconian measures are necessary to preserve the merit system. Justice White writing for the majority stated:

> "Perhaps Congress at some time will come to a different view of the realities of political life and governmental service."

We declare that the time has come for the Congress to come to a "different view."

H. R. 3400 looks to modify the Hatch act not to abolish it. Modification in this context means the elimination of some of the objectionable intents of the Hatch act as well as maintenance of its effective intents. The denial of access to partisan political participation violates civil servants First Amendment rights and is therefore duly excluded from inclusion in H. R.

3400. However, protection of the federal workforce from unwarranted coercion is a necessity and this bill is replete with safeguards against such coercion.

The Present Hatch Act Restrictions Are Not Narrowly Drawn

Abuses can occur within the civil service. Where you have a large civil service under the merit system but also under political leadership, determined by an election's outcome, abuses can arise.

The restrictions on fundamental rights must be narrowly drawn. Present Hatch Act prohibitions are overbroad. The Hatch Act prohibits all partisan political activities, and many non-partisan activities, including those voluntarily undertaken and unrewarded, which in no way reflect the influence of a patronage scheme. The Hatch Act deals with the potential problems mentioned above by prohibiting almost all political activities. Further, it does so in vague language, incomprehensible to ordinary citizens. It incorporates by reference thousands of administrative decisions dating back to the last century. As a result many harmless activities are prohibited or thought to be prohibited. There is a very definite chilling effect created by the Hatch Act. By its breadth and vagueness, the Hatch Act terrorizes federal and postal employees into a state of total political inactivity.

It is much better to deal with the real problems of government employees and political activities. Here are a few examples of the specific problems that can be resolved without the Hatch Act solution of "throwing the baby out with the bath water."

*A bar on partisan activity while on duty in Federal buildings.

*A bar on partisan activity while in uniform.

*A bar on soliciting, giving or receiving political contributions in government rooms or buildings.

*A bar on coercion.

H.R.3400 deals with legitimate problems but does so in a precise way. It is not overbroad like the Hatch Act.

The Hatch Act has been shown to be draconian, itself subject to political manipulation and overbroad. It is vital that millions of federal workers be emancipated from this harsh and outdated law.

We conclude by quoting the eloquent defense of political freedom, by Supreme Court Justice Hugo Black in his dissent in Mitchell.

> The section of the Act here held valid reduces the constitutionally protected liberty of several million citizens to less than a shadow of its substance. It relegates millions of federal, state, and municipal employees to the role of mere spectators of events upon which hinge the safety and welfare of all the people, including public employees. It removes a sizable proportion of our electorate from full participation in affairs destined to mould the fortunes of the nation. It makes honest participation in essential political activities an offense punishable by proscription from public employment. It endows a governmental board with the awesome power to censor the thoughts, expressions, and activities of law-abiding citizens in the field of free expression, from which no person should be barred by a government which boasts that it is a government of, for, and by the people--all the people. Laudable as its purpose may be, it seems to me to hack at the roots of a Government by the people themselves; and consequently I cannot agree to sustain its validity.

Footnotes

[1] Eccles, James R., The Hatch Act and the American Bureaucracy, Vantage Press, New York, 1981. p. 70.

[2] United Public Workers v. Mitchell, 330 U.S. 790 (1947).

[3] NAACP v. Button, 371 U.S. 415 (1963); Grayned v. City of Rockford, 408 U.S. 104 (1972).

[4] Connick v. Myers, 461 U.S. 138 (1981).

[5] 20 U.S.C. 7327.

[6] Stephen A. Smith, "The Uncivil Servants: Public Employees and Political Expression" (A Paper Presented at the Southern Speech Communication Association Convention) Orlando, Florida, April 7, 1983).

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NATIONAL ASSOCIATION OF LETTER CARRIERS
AFL-CIO

VINCENT R. SOMBROTTO
PRESIDENT

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TESTIMONY OF

VINCENT R. SOMBROTTO, PRESIDENT

NATIONAL ASSOCIATION OF LETTER CARRIERS

BEFORE THE

GOVERNMENTAL AFFAIRS COMMITTEE

CONCERNING

HATCH ACT REFORM

Tuesday, February 23, 1988

CONGRESSIONAL TESTIMONY

MR. CHAIRMAN. MY NAME IS VINCENT R. SOMBROTTO, PRESIDENT OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS. THE NALC REPRESENTS MORE THAN 310,000 ACTIVE AND RETIRED LETTER CARRIERS. WITH ME IS STEVE THROWER, WHO WAS A LETTER CARRIER WHILE SERVING AS MAYOR OF NORMAN, OKLAHOMA, FROM 1983-86.

THANK YOU FOR INVITING US TO TESTIFY ON HATCH ACT REFORM.

IN THE HOUSE DEBATE REPUBLICAN REPRESENTATIVE GENE TAYLOR, ALONG WITH MANY OF HIS COLLEAGUES, SAID THAT HE HAD OPPOSED PREVIOUS HATCH ACT REFORM LEGISLATION -- BUT NOT HR 3400. "THIS IS LEGISLATION WHOSE TIME HAS COME," HE SAID.

MR. CHAIRMAN, WITHOUT THE COOPERATIVE EFFORT OF GENE TAYLOR AND OTHER REPUBLICAN MEMBERS, WE MIGHT NOT BE HERE TODAY. MORE REPUBLICANS JOINED THE DEMOCRATS ON THIS BILL THAN IN ALL THE PREVIOUS ATTEMPTS SPANNING A DECADE. WHY? A REPUBLICAN COLLEAGUE FROM NEW YORK, FRANK HORTON, ANSWERED THAT HR 3400 "WAS THE SUCCESSFUL RESULT OF BIPARTISAN NEGOTIATIONS ... IT WAS REPORTED OUT OF COMMITTEE UNANIMOUSLY."

THIS WAS AN HISTORIC EVENT. BUT BIPARTISANSHIP IN CRAFTING THE LEGISLATION DOESN'T FULLY EXPLAIN THE OVERWHELMING 305-112 VOTE. THE MOST VITAL INGREDIENT WAS THE CONTENT OF THE BILL.

BOTH MR. HORTON AND TAYLOR TOOK THE HOUSE FLOOR TO STRESS, IN MR. HORTON'S WORDS, THAT THE NEW BILL "STRENGTHENS PROHIBITIONS AGAINST MISUSES OF OFFICIAL

AUTHORITY, AGAINST EMPLOYEES SOLICITING FROM THEIR SUBORDINATES OR THEIR CONTRACTORS OR AGAINST COERCION AND INTIMIDATION. **IT CLARIFIES THE AMBIGUOUS AND SELECTIVELY ENFORCED RESTRICTIONS ON POLITICAL ACTIVITIES."**

MR. CHAIRMAN, THAT STATEMENT CUTS THE HEART OUT OF OUR OPPONENTS' ARGUMENTS. THE HACKNEYED PHRASE THAT REFORM WILL "POLITICIZE" THE WORKFORCE DOESN'T APPLY TO THIS BILL. SENATOR ERNEST HOLLINGS ALSO ANSWERED THOSE CRITICISMS. IN A LETTER SUPPORTING REFORM, HE WROTE, "HOWEVER, THE BILL CONTAINS SEVERAL SAFEGUARD PROVISIONS SUCH AS TIGHTENING THE RESTRICTIONS ON POLITICAL COERCION AS WELL AS STRENGTHENING THE PUNISHMENT IF A VIOLATION OCCURS ..." THESE SAFEGUARDS "... WILL MAINTAIN THE NEUTRALITY OF THE CIVIL SERVICE SYSTEM..."

MR. CHAIRMAN, THE SAME PROHIBITIONS CURRENTLY IN EFFECT IN THE WORKPLACE ARE UNCHANGED. BY CLARIFYING AND SIMPLIFYING RESTRICTIONS, **THE RULES AND VIOLATIONS ARE CLEARER.** IT IS CLEAR: "HATCH ACT REFORM PROHIBITS POLITICAL ACTIVITY WHILE ON DUTY, IN A FEDERAL FACILITY, IN THE UNIFORM OF A FEDERAL JOB, OR WHILE USING ANY VEHICLE OWNED OR LEASED BY THE GOVERNMENT," SAID HOUSE SPONSOR REPRESENTATIVE BILL CLAY.

I FULLY SUPPORT THOSE PROHIBITIONS. IN FACT, I AGREE WITH THOSE OPPONENTS WHO WANT TO KEEP PARTISAN POLITICS OUT OF THE WORKPLACE. WHERE WE PART COMPANY IS THAT THEY EXTEND THE PROHIBITION TO LETTER CARRIERS' PRIVATE LIVES.

REPRESENTATIVE CLAY NOTED, "THERE IS NO EVIDENCE THAT

VOLUNTARY POLITICAL ACTIVITY IN ANY WAY DIMINISHES THE ABILITY TO MAINTAIN GOOD GOVERNMENT ... " I COULDN'T AGREE MORE.

THERE IS A LARGE BODY OF EVIDENCE THAT PROVES MR. CLAY'S POINT. REPRESENTATIVE CONSTANCE MORELLA (R-MD), WHOSE DISTRICT CONTAINS 65,000 FEDERAL EMPLOYEES, RESEARCHED THE ISSUE. "WORKING WITH THE CONGRESSIONAL RESEARCH SERVICE, I HAVE DETERMINED THAT PUBLIC EMPLOYEES OF SOME 4 STATES, INCLUDING MARYLAND AND VIRGINIA, ARE ALREADY ALLOWED LEISURE-TIME POLITICAL FREEDOM COMPARABLE TO THAT PERMITTED IN THE HATCH ACT REFORM BILL." SHE CONTACTED OFFICIALS IN MARYLAND AND VIRGINIA. **"NEITHER COULD REMEMBER A SINGLE COMPLAINT OF POLITICAL COERCION** INVOLVING GOVERNMENT EMPLOYEES."

OVER 40 STATES HAVE LIFTED THEIR "MINI-HATCH ACTS" ON STATE AND LOCAL EMPLOYEES. THERE IS NO EVIDENCE OF ABUSE OR VIOLATIONS.

THE CONCLUSION IS: POLITICAL PARTICIPATION WORKS. "IN 1988, AMERICA SHOULD NOT BE TRYING TO **RESTRICT** POLITICAL PARTICIPATION," SENATOR LOWELL WEICKER SAID. "WE SHOULD BE DOING EVERYTHING POSSIBLE TO **INCREASE** POLITICAL INVOLVEMENT."

COMMON CAUSE REFUSED TO TESTIFY AT THE HOUSE HEARINGS. THEY NOW EMBRACE THE MYTH THAT REFORM "POLITICIZES THE WORKFORCE." THEY ADMIT THAT THERE ARE MANY NON-PARTISAN ACTIVITIES WHICH WE CAN ENGAGE IN, AND THAT SUCH ACTIVITIES HAVE NOT RESULTED IN "POLITICIZING." THEY ARGUE THAT RUNNING FOR A NON-PARTISAN POSITION, SUCH AS A SCHOOL BOARD MEMBER, IS ACCEPTABLE. BUT IF THE SAME SCHOOL BOARD POSITION IS A

PARTISAN RACE, IT THREATENS THE FOUNDATIONS OF THE CIVIL SERVICE. THAT IS NONSENSE.

WE ARE RESPONSIBLE CITIZENS WHO SERVE OUR COUNTRY WELL. LETTER CARRIERS VOTE IN PARTISAN ELECTIONS. DO THEY GIVE POOR SERVICE TO THE OTHER SIDE? NO, BECAUSE WE ARE PROFESSIONALS, AS ARE FEDERAL EMPLOYEES. AN EMPLOYEE IN THE AGRICULTURE DEPARTMENT WHO STUFFS ENVELOPES FOR A MAYORAL RACE IS NOT GOING TO RISK JOB, FAMILY AND FUTURE BY VIOLATING THE LAW. SUCH AN EMPLOYEE IS NOT SUBVERTING GOOD GOVERNMENT, BUT IS PROMOTING **BETTER** GOVERNMENT.

SENATOR WEICKER ALSO POINTED OUT THAT THERE IS MUCH LESS LIKELIHOOD OF A FEDERAL EMPLOYEE, SUCH AS AN AGRICULTURE DEPARTMENT EMPLOYEE, VIOLATING THE HATCH ACT THAN A PERSON AT THE LOCAL LEVEL. THE REASON IS THAT THE LOCAL LEVEL IS MORE "HANDS-ON," THEREBY SUBJECT TO GREATER CAUSE-AND-EFFECT. THE SUCCESS AT THE LOCAL LEVEL OF LOOSENED RESTRICTIONS PROVIDES A GOOD LESSON FOR FEDERAL REFORM.

I LOOKED AT THE OMB/JUSTICE LETTER OPPOSING HR 3400, WHICH THE ADMINISTRATION SUBMITTED ON THE HOUSE SIDE. I AM DEEPLY DISTURBED. FIRST, THEY HAVE THE AURA OF AUTHORITY -- WHICH CAN BE COMPELLING. BUT THE FACTS DON'T SUPPORT THEIR CONCLUSIONS. MANY OF THEIR CRITICISMS ARE THE "WHAT IF" CATEGORY. THEY SAY, "WHAT IF" SOMEONE WORKING FOR THE CENSUS BUREAU IS A CAMPAIGN MANAGER. THAT EMPLOYEE HAS AN INSIDE TRACK ON CENSUS INFORMATION. MY RESPONSE IS: THE CENSUS IS PUBLIC INFORMATION. IF THE INFORMATION IS SECRET, OBTAINED

ILLEGALLY OR WITHHELD FROM THE OPPONENT WRONGFULLY, THE PERSON IS IN VIOLATION OF THE LAW UNDER CURRENT OR PROPOSED LEGISLATION. I ALSO WONDER HOW MANY CENSUS BUREAU EMPLOYEES ARE CHAFING AT THE BIT TO BE CAMPAIGN MANAGERS IN THEIR SPARE TIME.

IF WE CONDEMN ON THE BASIS OF EXPERTISE, DO WE DISQUALIFY A TEACHER WHO RUNS FOR SCHOOL BOARD? IF HAZARDOUS WASTE IS A CAMPAIGN ISSUE, SHOULD EMPLOYEES OF A SANITATION COMPANY BE PROHIBITED FROM VOLUNTEERING ON THEIR OWN TIME IN A CAMPAIGN? OF COURSE NOT, BUT IF THE SAME EMPLOYEE DOING THE SAME WORK IS FEDERAL, IT'S A HATCH ACT VIOLATION. I AGREE WITH CONGRESSWOMAN MORELLA WHEN SHE SAID, "OUR CONSTITUTION BEGINS, `WE THE PEOPLE ... NOT `WE THE PEOPLE EXCEPT THOSE IN FEDERAL SERVICE.'"

THE OMB/JUSTICE DEPARTMENT PAPER IS RIFE WITH SUCH EXAMPLES. THAT DISTURBS ME, BECAUSE THEIR ARGUMENTS AND VEHEMENCE BORDERS ON AN ETHICS PROBLEM -- IT APPEARS AS IF THEY WERE ORDERED, BOUND AND DETERMINED TO PRODUCE A NEGATIVE PRODUCT REGARDLESS OF THE FACTS. IT WAS UNPROFESSIONAL.

A FURTHER EXAMPLE OF OMB/JUSTICE "PARTISANSHIP" IS THEIR OBJECTION TO EXTENDING REFORM TO "POLITICAL ACTIVITY BY SENIOR POLITICAL APPOINTEES." IF REAL SENIOR EXECUTIVES WANT OUT, THE BILL COULD BE AMENDED. BUT IF THEY WANT TO HIDE AND PENALIZE THOSE WHO WANT TO BE PART OF THE POLITICAL LIFE OF AMERICA, WE WOULD OPPOSE THEM.

IT APPEARS THAT OMB WANTS IT BOTH WAYS: THEY OBJECT TO

"LOOSENING" HATCH RESTRICTIONS FOR MOST EMPLOYEES AND OBJECT TO STRENGTHENING THEM FOR SENIOR EXECS!

THE BOTTOM LINE IS THAT WE CAN CREATE A LOT OF "WHAT IF" SITUATIONS. MOST EMPLOYEES IN THE OMB/JUSTICE EXAMPLES WOULD BE GUILTY UNDER BOTH CURRENT LAW AND HR 3400. OMB AND JUSTICE ADMIT THAT "THE BILL INCLUDES A NUMBER OF PROVISIONS INTENDED TO ENSURE THAT ANY POLITICAL ACTIVITY IS CONDUCTED OFF THE JOB, AND TO PREVENT CONFLICTS BETWEEN OFFICIAL DUTIES AND POLITICAL ACTIVITIES..." UNFORTUNATELY, THE AGENCIES CONSCIOUSLY GO ON TO RIDICULE THOSE VERY PROVISIONS. THAT'S AN OLD TRICK. THOSE AGENCIES DECLINED TO PARTICIPATE IN DRAFTING LANGUAGE. WE COULD HAVE BENEFITED FROM CONSTRUCTIVE INPUT. THEIR DOCUMENT, HOWEVER, LEADS ME TO BELIEVE THEY ARE INSINCERE, AND WOULD CONTINUE TO BLOCK REASONABLE PARTICIPATION.

OUR OPPONENTS CHARGE THAT REFORM NEEDS MORE DEBATE. WHERE HAVE THEY BEEN FOR THE PAST 50 YEARS? I WAS IN HIGH SCHOOL WHEN THIS DEBATE BEGAN. IN 1966 A BIPARTISAN COMMISSION ON POLITICAL ACTIVITY OF GOVERNMENT PERSONNEL RECOMMENDED REFORM, AND WE'VE BEEN DEBATING THAT FOR 22 YEARS. CONGRESSMAN TAYLOR CHALLENGED THOSE WHO ARGUED FOR MORE DEBATE, "I ASKED THOSE MEMBERS, WHAT AMENDMENTS THEY WOULD LIKE TO OFFER?" SAID CONGRESSMAN TAYLOR. "WHEN WE GOT DONE TALKING ABOUT IT, THE MEMBERS SAY, `WELL, I REALLY DO NOT GUESS WE HAVE GOT ANY AMENDMENTS TO OFFER.'

"THE FACT IS, THIS BIPARTISAN COMMITTEE CLEANED THIS BILL UP BEFORE WE BROUGHT IT TO THE FLOOR."

OPPONENTS ARGUE THAT EMPLOYEES DO NOT WANT REFORM. HOW PATERNALISTIC. LET ME POINT OUT THAT POLITICAL PARTICIPATION IS VOLUNTARY. THE WAY ONE POLL POSED THE QUESTION WAS: THE HATCH ACT HAS PROTECTED YOU SINCE 1939. SUPPORTERS THINK IT IS VITAL TO PREVENT POLITICIZING AND PROTECT YOU. OPPONENTS THINK YOU DO NOT NEED THE PROTECTION. DO YOU WANT "REPEAL?"

WORDED LIKE THAT, I WOULD VOTE "NO" BECAUSE I WANT REFORM, NOT REPEAL.

LAST MONTH I POLLED THE 310,000 MEMBERS OF THE NALC. I DESCRIBED THE CONTENTS OF HR 3400, AND THEN ASKED, "DO YOU SUPPORT REFORMING THE HATCH ACT?" BY A STAGGERING MARGIN OF 13 TO 1 (93% TO 7%) THEY SAID "YES." I HAVE ATTACHED TO MY STATEMENT A COPY OF THE POLL FROM THE NALC MAGAZINE, POSTAL RECORD.

TIMES CHANGE. POSTAL SERVICE AND FEDERAL GOVERNMENT WORKING CONDITIONS CHANGE. IN 1939 POSTMASTERS WERE POLITICAL APPOINTEES; TODAY THAT IS NOT THE CASE. IN 1939 POSTAL EMPLOYEES HAD FEW SAFEGUARDS; SINCE 1970 THAT IS NOT THE CASE. IN 1939 FEDERAL EMPLOYEES WERE NOT COVERED BY THE MERIT SYSTEM, NOW THEY ARE. ORIGINALLY THE ACT WAS ONE LAW, NOW IT'S OVER 3,000 RULINGS.

IT IS A MORASS. DOES IT MAKE SENSE THAT A FEDERAL EMPLOYEE CAN WEAR A CAMPAIGN BUTTON BUT CAN NOT HOST A MEET-THE-SCHOOLBOARD-CANDIDATE COFFEE AT HOME AFTER HOURS? A

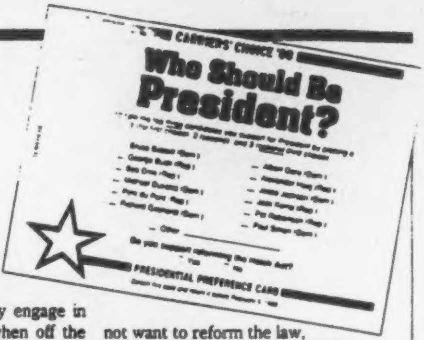
LETTER CARRIER CAN ATTEND A RALLY BUT CAN'T HOLD A SIGN? A 14"X29" BUMPER STICKER IS OKAY, BUT YOU GET PROSECUTED IF ITS 15" x 30". MR. CHAIRMAN, YOU MAY BE OKAY WITH ONLY FIVE LETTERS IN YOUR NAME, BUT SENATOR STEVENS OR BINGAMAN MAY HAVE TO SHORTEN THEIR NAMES. A LETTER CARRIER MAY WRITE A LETTER TO THE EDITOR BUT MAY NOT HAVE COPIES DISTRIBUTED TO FIVE OR MORE NEWSPAPERS, NOR WRITE FIVE OR MORE CONSECUTIVE LETTERS TO ONE NEWSPAPER.

IT IS ABSURD IN 1988 TO DENY CIVIL RIGHTS TO THREE MILLION CITIZENS. LAWS LIKE THIS CAUSE PEOPLE TO LOSE RESPECT FOR THE GOVERNMENT WHICH ENACTS THEM.

I CONCUR WITH CHAIRMAN WILLIAM FORD: "THE HATCH ACT WAS WRITTEN FOR A DIFFERENT TIME AND FOR FAR, FAR DIFFERENT CIRCUMSTANCE ... AS LAWMAKERS IT IS YOUR DUTY TO ENSURE THE FEDERAL LAWS FIT THE TIME."

MEMBERS OF THE COMMITTEE, THANK YOU AND I WILL BE GLAD TO ANSWER ANY QUESTIONS.

LEGISLATIVE UPDATE



THE CARRIERS' CHOICE '88

Who Should Be President?

— Other

PRESIDENTIAL PREFERENCE CARD

Where do you stand on Hatch Act reform?

Do you think letter carriers and other postal and federal employees should have the same political rights enjoyed by other Americans? You have a chance to express your opinion by returning the Presidential Preference Card, inserted just inside the front cover of this issue.

The reply card asks: *Do you support reforming the Hatch Act?* By voting "yes," you indicate support for the Hatch Act reform bill, currently before Congress, which would grant postal and federal employees full rights to participate in partisan politics off the job, while retaining on-the-job protections against political coercion by management.

Under the bill, letter carriers would be prohibited from engaging in any political activity while at work or in uniform. However, carriers would enjoy full rights to voluntarily engage in partisan political activity when off the job and out of uniform. This includes the right to campaign for a candidate in a partisan election and the right to run for party or political office.

In addition, the bill strengthens current protections against supervisors intimidating or coercing carriers to support a particular candidate. The bill provides for criminal penalties for any supervisor who forces a letter carrier to become involved in a political campaign.

The reform bill—H. R. 3400—passed the House on November 17 (*see roll call, pages 26–27*) and has been referred to the Senate for consideration. Opponents of reform—such as Citizens Against Union Control of Government and the National Right to Work Committee—claim that working people do not want to reform the law, and have redoubled their efforts to defeat the legislation.

The National Right to Work Committee sent a letter to members of Congress claiming that the bill is a "vicious federal union-boss power grab," and charging that Hatch Act reform is a partisan political move not supported by rank-and-file union members.

"Hatch Act reform is not politics," replied NALC President Vince Sombrotto. "It is about the constitutional rights of 3.5 million individuals who work for the federal government. Enemies of the bill are simply fighting to deny those rights."

Cast your vote on Hatch Act reform along with your preferences for President by returning the enclosed card before February 5. ☒

207 WASHINGTON ST.
HARTFORD, CT. 06106
JURIS NO. 21280
TELE. (203) 522-5049

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SPECIAL COUNSEL
Petitioner,

v.

JACK F. WINKLEMAN

and

STATE OF CONNECTICUT,
DEPARTMENT OF HUMAN RESOURCES,
Respondents,

DOCKET NUMBER
HQ12068710008

DATE: AUGUST 17, 1987

Brief on behalf of Respondent Jack I. Winkleman

I. Introduction:

The Special Counsel of the Merit Systems Protection Board ("Petitioner") has alleged that Respondent Jack I. Winkleman violated the Unted States Hatch Act, 5 USC 1501, et seg, by his campaign to be elected Probate Court Judge for the District of Wallingford in Connecticut. As a remedy for the management and effectiveness of community and social service programs. These programs relied heavily on federal funding (stip. paragraph 2).

On November 4, 1986 Winkleman was the Republican candidate for the position of Judge of Probate for the District of Wallingford (stip. paragraph 15). Prior to election day he engaged in activities which related to his candidacy (stip. paragraph 16). His conduct did not violated the Connecticut State Hatch Act which allows State employees to run for office

this alleged violation the Petitioner is requesting that Winkleman's Employer, the State of Connecticut, Department of Human Resources, either discharge Winkleman or suffer a substantial loss in revenue.

The Employer has been named a Respondent in this action and is challenging the constitutionality of the Hatch Act, especially as it applies to Connecticut State employees (See Brief of Respondent State dated August 11, 1987). Respondent Winkleman will herein adopt all the arguments of the State and in addition argue that the Hatch Act was not intended to apply to such positions such as Probate Judge.

II. Statement of Facts:

The facts are not in dispute and have been stipulated by the parties. Jack Winkleman is a Human Resource Development Senior Representative for the Department of Human Resources (stip. paragraph 2). In his position he reviewes and evaluates

the management and effectiveness of community and social service programs. These programs relied heavily on federal funding (stip. paragraph 2).

On November 4, 1986 Winkleman was the Republican candidate for the position of Judge of Probate for the District of Wallingford (stip. paragraph 15). Prior to election day he engaged in activities which related to his candidacy (stip. paragraph 16). His conduct did not violated the Connecticut State Hatch Act which allows State employees to run for office but requires them to resign State employment if victorious, C.G.S. 5-266a.

During his campaign he remained in his position with the Department of Human Resources (stip. paragraph 17). He is still working in his original position for the agency (stip. paragraph 18).

III. Argument:

A. The Hatch Act, As The Special Counsel Seeks To Have it Applied In This Case, Violates The First Amendment

Respondent Jack Winkleman adopts herein the argument of Respondent State of Connecticut Department of Human Resources found in its brief of August 11, 1987 at pages 3 through 17 inclusive.

B. The Hatch Act, As The Special Counsel Seeks To Have It Applied In This Case, Violates The Tenth Amendment

Respondent Winkleman hereby adopts as amicus curie the argument of Respondent State of Connecticut Department of Human Resources found in its August 11, 1987 brief at pages 18 through 27 inclusive.

C. The Hatch Act, As The Special Counsel Seeks To Have It Applied In This Case, Violates The Constitutional Guarantee Of Equal Protection Of The Law

Respondent Winkleman adopts verbatim the argument of Respondent State of Connecticut Department of Human Resources found in its August 11, 1987 brief at pages 28 through 34 inclusive.

D. The Hatch Act Was Not Intended To Apply To Nonpartisan Probate Court Judge Position

Respondent Winkleman was admitedly a candidate for Probate Judge for the District of Wallingford (stip. paragraph 15). The position was statutorily created. C.G.S 45-1. While it is an elected position it can not be disputed that its obligations require the holder to act nonpartisan manner. See eg., C.G.S 45-11a; C.G.S. 45-4f. In addition the purpose a Probate Judge is to probate testamentary estates, handle adoptions and other estate and planning issues, C.G.S. 45-4. The authority of the Probate Judge is heavily regulated C.G.S 45-4f. Regarding financial manners, a Probate Judge has little discretion. See e.g, C.G.S. 45-1, et seg.

The Hatch Act was intended to eliminate corruption in the civil service. A Probate Judge does not have the opportunity to misuse his employment for the State while acting as a Judge (See e.g Conflict of Interest Regulation 5-266a-1, Respondent State brief at 15). Therefore the prohibitions of Hatch Act should not be applied to Winkleman's campaign for Probate Judge.

Although there is no case law directly on point in support of this argument, some support can be inferred from the U.S. regulations and the statute itself.
In particular Section 151.111(12) of the Title 5 of the Code of Federal Regulations states that "it is permissible for an employee to participate in public affairs..... in a manner which does not materially compromise the neutrality, efficiency or integrity of his administration of federally funded functions." As noted above, as Probate Judge Winkleman would not be able to compromise his state position, directly or indirectly.

The Special Counsel will most likely point to 5 USC 1503 to support his argument that the status of Probate Judge is irrelevant.

That statute states that it is not a violation of the Hatch Act to be a candidate in nonpartisan election, 5 CFR 151.101 (g). While there is no dispute that by a practice long developed, the nonpartisan position of Probate Judge is elected in a partision election. C.G.S. 45-5. and that the statute does not specificaly exempt such positions, it is not clear that Congress intended the Hatch Act to apply in a situation such as the one at hand. If anything 5 USC 1503 should be regarded as evidence that a distinction should be made between nonpartisan and partisan positions. Congress clearly was not concerned regarding nonpartisan campaigns which resulted in election to nonpartisan positions. Without more evidence of Congressional intent, it should not be assumed that Congress meant the Hatch Act to apply to partisan elections to nonpartisan positions.

In light of the low probability that Winkleman's campaign could result in corruption, and the uncertainity as to whether Congress intended to regulate such behavior, the charges against him should be dismissed as de minimus. Such an action is within the authority of the administrative law judge and has been upheld on at least one occasion. State of Utah v. USA, 286 F.2d 30 (1961), cert. den. 81 S ct. 1053, 306 US. 918, 6 L. ED. 2nd 240 (1961).

IV. Conclusion:

For the arguments made by both Respondents, the request of the Special Counsel to have the State of Connecticut either fire Mr. Winkleman or lose funding should be denied.

Respectfully submitted,

Barbara J. Collins
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J. William Gagne, Jr. and
Associates
207 Washington Street
Hartford, CT. 06106
(203)522-5049
Juris No. 21260

CERTIFICATION

I hereby certify that a copy of the foregoing order was sent first class postage pre-paid this 17th day of August, 1987 to Robert B. Teitelman, Assistant Attorneys General, State Office Building, Room 147, 165 Capital Avenue, Hartford Connecticut, 06106 and federally expressed to Robert H. Stern, Esquire, Office of Special Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Suite 1100, Washington, DC. 20005.

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TESTIMONY
OF
DALLAS N. FIELDS, PRESIDENT
NATIONAL RURAL LETTER CARRIERS' ASSOCIATION
BEFORE THE
SENATE SUBCOMMITTEE
ON
FEDERAL SERVICES
OF THE
SENATE GOVERNMENTAL AFFAIRS COMMITTEE
ON
H. R. 3400
HATCH ACT REFORM

Tuesday, February 23, 1988

Dear Mr. Chairman and Members of the Committee:

My name is Dallas N. Fields and I am the President of the 73,000-member National Rural Letter Carriers' Association. Rural letter carriers, daily, drive 2,400,000 miles to deliver the mail on 43,000 rural routes to approximately 18,600,000 rural American families. I appreciate this opportunity to appear before the Subcommittee to express our strong feelings on this legislation to amend the Hatch Act.

The Hatch Act was originally passed during Franklin Roosevelt's second term under entirely different circumstances. In those days, immediately after the Depression, you had national unemployment of tragic proportions. Roosevelt and the "New Deal" brought in all kinds of make-work proposals and put millions of people to work again across this Nation. Because of the situation of putting people to work, there was a fear in the Congress, perhaps justified in 1939, that those people receiving jobs would feel an obligation not only to that President and his Administration, but to the political party which he represented. Congress wanted a non-partisan Federal work force. Almost 50 years have passed and we now have an entirely different situation in which new laws, new ethics, and new modus operandi are in effect in this country. What we find now is, instead of the Hatch Act protecting people from feeling an obligation to those who got them a job, it prohibits them from full participation in their National, State, and Local Government by prohibiting their political participation other than by exercising their right to vote.

We feel that the House-passed Bill, H. R. 3400, is a well-balanced approach to the problems of 1988. Under H. R. 3400, employees could participate in a full range of political activities as long as they are off duty and away from Federal buildings or the work site. We currently have some of our members who are serving their communities as Mayors, City Council Members, and School Board Members. Many, who wish they could be of service to their communities at the local level, are, in fact, prohibited from doing so by the current Hatch Act.

We think the protections against coercion in this Bill are sufficient to protect the citizens who pay the salary of rural letter carriers, but we would hope for a little more freedom. Let's look at some examples, Mr. Chairman, in your own State.

In the town of Greenbrier, population 1,500, if our State Secretary desired to run for City Council or Mayor, she would be prohibited from doing so because you have a partisan party ballot and, therefore, she could not run. On the other hand, in Branch, Arkansas, a rural carrier could run and serve as Mayor or on the City Council because they have non-partisan elections. In Charleston, Arkansas, the home of Senator Dale Bumpers, they have a population of about 1,700. They have partisan elections and, therefore, were Senator Bumpers a rural letter carrier, he would be prohibited from seeking local office.

We have some other unusual examples. In Jonesboro, a population of about 31,000, we have a rural letter carrier who, for many years, was desirous of serving on the City Council. He was, however, prohibited from running until his retirement and since then, he has served his community with distinction for the last ten years as a member of the City Council.

In Wynne, Arkansas, a population of approximately 8,000, Ira Lee Allen, a carrier, was appointed by the Mayor to the City Council. Since the Hatch Act doesn't mention anything about appointment, he served there with distinction for three years. However, when it came time to seek a full term as a City Council member, the Hatch Act prohibited him from running for election. So, he had to simply serve out his term and give up his service to his community and is no longer a City Councilman.

In another area, which I will leave un-named, we currently have a rural carrier serving on the Quorum Court, a job that is the bottom of public service in a very small community. It is so far down in terms of public service, that his service is not even included as a part of the State Retirement system. He does not even receive a monthly salary. He receives only a per diem reimbursement for the two meetings a month which occur on the Quorum Court. As you know, Senator Pryor, Quorum Court is the legislative body of County Government.

Our Arkansas State President, James A. McGuire, Jr., lives in Malvern, Arkansas, a population of 15,000. His wife happens to be on the Democratic Committee of the County. Jim has, for many years, wanted to run for the City Council in Malvern, but he is prohibited from doing so by the Hatch Act, because they have partisan elections.

I hope that these examples give you some idea of the hodge podge that our people face in terms of the current Hatch Act. Therefore, we think it is time for some amendments to the Hatch Act which would emancipate rural carriers and other Postal and Federal employees so they could be citizens with full rights of participation in the American political process. We would appreciate the assistance of this Committee and of the entire Senate in helping restore to rural letter carriers full rights so that they could serve their communities and our States. We think that this Bill or some Bill like it, perhaps addressing some of the concerns that some Senators have, would be a good way to begin to change things for the better by amending the Hatch Act in 1988.

Thank you for this opportunity to present our views and if there are any questions, I would be most happy to answer them.

Thank you.

Respectfully submitted,

Dallas N. Fields
President, NRLCA

APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Moe Biller, President
(202) 842-4246

STATEMENT OF

MOE BILLER, PRESIDENT

THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

before the

COMMITTEE ON GOVERNMENTAL RELATIONS
U.S.SENATE

on

HATCH ACT REFORM
H.R.3400

FEBRUARY 23, 1988

National Executive Board

Moe Biller, President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Neill
Industrial Relations Director

Kenneth D. Wilson
Director, Clerk Division

Richard I. Wevodau
Director, Maintenance Division

Donald A. Ross
Director, MVS Division

George N. McKeithen
Director, SDM Division

Norman L. Steward
Director, Mail Handler Division

Regional Coordinators

Raydell R. Moore
Western Region

James P. Williams
Central Region

Philip C. Flemming, Jr.
Eastern Region

Romualdo "Willie" Sanchez
Northeastern Region

Archie Salisbury
Southern Region

HATCH ACT TESTIMONY

Mr. Chairman, and Members of the Committee, my name is Moe Biller. I am President of the American Postal Workers Union, AFL-CIO, the largest postal workers union in the world. We currently represent more than 350,000 members throughout the country. Our members are situated in every city, village, borough, and town in the United States.

The American Postal Workers Union has long been a proponent for changes in the Hatch Act. The officers and members of APWU believe that in light of this Administration's misinterpretation of the Hatch Act and the heavy-handed tactics by the Special Counsel of the Merit Systems Protection Board, that this is an excellent time to re-examine the legislative intent of the Hatch Act. We believe HR 3400, as passed in the House of Representatives on November 17, 1987 by a vote of 305-112 is a workable alternative to the current regulations which have become even more confusing and vague over the years. Mr. Chairman, we thank you for this opportunity to testify before the Committee, and look forward to working with you and your staff in efforts to establish a fair and sensible solution to the problems bought on by the dated and confusing legislation known as the Hatch Act.

Defective Enforcement

As you know Mr. Chairman, NALC President Vincent Sombrotto, AFGE President Ken Blaylock, and I, have been unfairly charged by the Special Counsel of the Merit Systems Protection Board with violations of the Hatch Act. The Special Counsel's Office claims that we had engaged in campaign activity during the 1984 Presidential campaign by writing articles in our respective internal union publications supporting Walter Mondale.

The Hatch Act was intended to limit active political management, or campaigning, not the speech of postal and federal employees. A principal purpose of the Act was to prevent employers from harassing or intimidating employees for political purposes. Its key provisions prohibit the use of official authority or influence to coerce the political action of a person or body. We three union officials who have been charged, are not guilty of any of these violations.

The Hatch Act was intended to prevent political coercion in the workplace. We have all been on leave without pay to serve as union officers for long periods of time. I have been on leave without pay since 1959. My statements to our union members about candidates and political affairs are far removed from anything which occurs in the workplace. It is ironic that legislation which was intended to protect postal and federal employees is being used to intimidate and harass employees on indefinite leave to serve as union officials.

We believe the Special Counsel has miscontrued and misapplied the Hatch Act in the case of the three union presidents.

Furthermore, on pure First Amendment grounds, a postal worker is permitted to voice his or her views that a given candidate's election would be in the best interests of all postal employees. Finally, as union officers, we have the right to speak for the organizations we represent.

Mr. Chairman, as you can see, the confusing, ambiguous, and overly broad language of the Hatch Act needs fixing. I believe now is the time, and I believe that H.R. 3400, which passed overwhelmingly in the House of Representatives, is an excellent vehicle to achieve these means.

History and Background

Legal restraints limiting the political activity of government employees have been a subject of discussion in American government since the nation was founded. They were first considered by the Second Session of the First Congress in 1791. A debate on the levy of an excise tax on distilled spirits attempted to "prevent Inspectors or any other officer under them from interfering either directly or indirectly in elections ... on penalty of forfeiting their offices."[1] Debate in the House centered around the question of such action violating the constitutional rights of the citizen. Congress took no action on the matter at that time and the controversy did not again appear for forty-six years.

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[1] Dorothy G. Fowler, "Precursors of the Hatch Act," Mississippi Valley Historical Review, 47 (September 1969), 247.

By 1801, the controversy between the Federalists and Anti-Federalists had ripened to such a point that President Jefferson issued a restriction on political activity in an obvious attempt to prevent his opponents from making any use of government personnel for their own political gain. However, Jefferson avoided wording his promulgation in such terms, and , instead, stated that it was "improper for an officer, dependent upon the Executive ... to take part in the business of electioneering," and that such activity was "inconsistent with the Constitution and his duties to it." While the President did not think that one should give up all rights as a citizen because of government employment, it was clear that he did think that such activities as "attempting to control or influence the votes of others," as implied by the term "electioneering," should be restricted or limited.[2]

In June of 1877, President Rutherford Hayes issued an order directing department heads to note that "no officer should be required or permitted to take part in the management of political organizatiohs, caucuses, conventions, or election campaigns." Hayes's order later became incorporated into department rulings. For example, the Post Office, traditional stronghold of patronage, declared that "Postmasters cannot hold a position on a county central committee, on a town central committee, nor can he [sic] take part in the management of political organizations, caucuses, conventions, or election campaigns."

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[2] Joseph M. Friedman, and Tobias G. Kinger, "The Hatch Act: Regulation by Administrative Action of Political Activities of Government Employees, "Federal Bar Journal", Vol. 7 (October 1945),6. Friedman is quoting Jefferson. Also see Niles' Register (Baltimore), XXXIX, 274-75 (December 18, 1830) see "The Schenectady Cabinet." Also see James D. Richardson, (comp.), Messages and Papers of the President, 1789-1897 (10 vols., Washington, 1896-1899) Vol. 10, pp. 98-100.

Senator Carl A. Hatch of New Mexico joined with Senator Frederick Steiwer in 1937 to introduce a Senate bill designed to restrict political activity of government employees. A similar bill was introduced by John P. Kvale in the House, but like the Hatch and Steiwer bill it received little attention.

During the 1938 Congressional elections there was evidence indicating that government funds and employees were used to aid in primary election campaigns. This activity and use of government relief funds for partisan purposes caused reaction in Congress on the part of both Republicans and Democrats.[3]

It is important to note that the abuses which resulted in the Hatch Act being passed resulted not from voluntary participation by federal employees in partisan politics, but from coercion and improper use of official authority by supervisory personnel.

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[3] Pamela Ford, Political Activities and the Public Service: A Continuing Problem (Berkley: Institute of Governmental Studies, University of California, 1963), p. 21. As Pamela Ford indicates: Passage of the Hatch Act in 1939 is attributed to one of the most heated issues of the 1938 national election campaigns -- the actual or alleged misuse of relief funds for political purposes. Its enactment was the culmination of a long standing controversy on the subject of the "spoils" and merit system in governmental employment in general and the propriety of political action by public employees in particular.

Senator Hatch, along with Senator Warren R. Austin of Vermont and Senator Morris of Texas sponsored a bill to prohibit involuntary political activity by federal employees. On August 2, 1939, the bill passed the Senate without debate and was passed in the House after it had been amended to exclude the President and Vice President, heads and assistant heads of departments, and a restricted number of other Presidential appointments.[4] The House Judiciary Committee had sought to expand the areas of exceptions, but the action was not approved by the whole House. Senator Hatch contended that the Judiciary Committee's original proposition would have rendered the bill as ineffective as previous rulings had been in controlling non-classified employee activities. The final vote of 241-134 in the House was far from the unanimity expressed in the Senate.

Supreme Court on the Hatch Act

The Supreme Court has twice considered the constitutionality of the Hatch Act, and , while the Court has upheld the Act by narrow margins, both times the Court has suggested that Congress change the law.

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[4] Elizabeth Yadlosky, The Hatch Act (Washington, D.C.: The Library of Congress Legislative Reference Service, 1966), p.1.

Supreme Court Justice Black wrote in an early challenge to the constitutionality of the Hatch Act:

> Legislation which muzzles several million citizens threatens popular government not only because it injures the individual muzzled but because of its harmful effects on the body politic in depriving it of the political participation and interest of such a large segment of our citizens. Forcing public employees to contribute money and influence can well be prescribed in the interest of "clean politics" and public administration. But I think the Constitution prohibits legislation which prevents millions of citizens from contributing their arguments, complaints, and suggestions to the political debates which are the essence of our democracy; prevents them from engaging in organizational activity to urge others to vote and take an interest in political affairs; bars them from performing the interested citizen's duty of insuring that his or her fellow citizen's votes are counted. Such drastic limitations on the right of all the people to express political opinions would be inconsistent with the First Amendment's guarantee of freedom of speech, press, assembly, and petition. And it would violate, or come dangerously close to violating, Article I and the Seventeenth Amendment of the Constitution, which protect the right of the people to vote for their Congressmen and their United States Senator and to have their Votes counted...[5]

Justice Douglas dissenting in part wrote a separate opinion. In this statement he said:

> ... To sacrifice the political rights of the industrial (governmental) worker goes far beyond any demonstrated or demonstrable need. Those rights are too basic and fundamental in our democratic political society to be sacrificed or qualified for anything short of a clear and present danger to the civil service system.

Congressional Action

The idea that the Hatch Act is outdated and confusing is not a new concept. Congressional Committees and Commissions have studied the subject since at least 1965. In March of 1965, Senator Daniel Brewster (D-MD) introduced S. 1474 calling for the creation of a special twelve-member bipartisan study commission to make a complete investigation of the federal laws which limit or discourage participation of government personnel in politics.

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[5] United Public Workers v. Mitchell, 330 U.S. 75 (1947) p.111.

Testifying before the Rules Committee on S. 1474, Civil Service Commission Chairman John W. Macy, said:

> Twenty-five years have passed since the enactment of this law (Hatch Act). There have been changes in governmental programs and relationships. These changes may well have affected or altered the purposes and requirements for limiting partisan political activity of Government employees. They may have produced conditions which call for modifications in the methods and degree of such restrictions.

S. 1474 passed in the Senate on August 25, 1965 and in the House of Representatives on September 19, 1966.

The Commission on Political Activity of Government Personnel was charged with the responsibility of preparing a report on its findings and recommendations. The Commission fulfilled this task by issuing a three-volume report on its activities.

The final report of the Commission on Political Activity of Government Personnel stated:

> In the opinion of this Commission, the best protection that the Government can provide for its personnel is to prohibit those activities that tend to corrode a career system based on merit. This requires some limits on the role of the Government employee in politics. It was the unanimous view of the Commission members, however, that these limits should be clearly and specifically expressed, and that beyond those limits political participation should be permitted as fully as for all other citizens.

The Commission further found that existing laws relating to political activities were confusing to Federal employees. A survey conducted for the Commission revealed that 64.1 percent of federal employees could identify only five of ten listed political activities as either permissible or prohibited.

One would assume after such a Commission had been formed, the problem studied, and a report issued, that some legislation would be introduced in Congress. It was not, but the Congress now has a vehicle in the legislation being considered before this Committee to correct the obvious problems with the Hatch Act.

In short, the Hatch Act is a sweeping ban on partisan electoral participation. Technically, it incorporates the 3,000 pre-1940 Civil Service Commission rules. This problem was explicitly recognized by the former U.S. Civil Service Commission. In 1949, the CSC acknowledged that "the public cannot go to original sources to study the commission's pre-Hatch Act determinations, because they are embodied in diffused files and records of the commission, which are continually expanding through the years." Further, the commission stated that even if the records were available, significant problems might inhibit gaining access to them because they "contain matter which was received under express or implied pledge of confidence." So, not only are these rules confusing, they are in some ways, not even available for review or further interpretation.

During the 94th Congress, both houses of Congress passed a bill, H.R. 8617, which would have repealed many of the prohibitions on political action. President Ford vetoed the measure, and the veto was sustained when the House fell 26 votes short of the two-thirds necessary to override it.

Support of HR 3400

The House passed bill, HR 3400, is an excellent attempt to correct the ills of the current legislation. In addition to providing postal and federal employees greater opportunity to participate in the political processes of this country, HR 3400 prohibits every kind of conduct which conceivably threatens the merit system. The key features of this bill, in our opinion, are those which:

* State that it is the policy of Congress that postal and federal employees should be encouraged to exercise their right to participate or to refrain from participation in the nation's political processes, unless that right is expressly limited by law. Employees should be free to exercise this right without fear of penalty or reprisal.

* Prohibit employees from using, directly or indirectly, their official authority or influence to interfere with or affect the result of an election.

* Prohibit employees from using, directly or indirectly,

their official authority or influence to intimidate, threaten, coerce, command or influence any individual to vote for or against a particular candidate, or vote or not to vote, to give or withhold a political contribution or to engage or not to engage in any political activity.

* Prohibit political activities by employees who are on duty.

* Provide that an employee who is a candidate shall, upon request, be granted leave to permit the employee to engage in activities relating to the candidacy. Exceptions may be made if the "exigencies" of the public business so require.

The members of the American Postal Workers Union believe that after 49 years of sometimes arbitrary prohibitions against political action and involvement by postal and federal workers in this country that such employees have proven themselves mature and intelligent enough to have this unconscionable act removed from the books and from the backs of the affected employees. Postal workers are ready, willing, and able to participate fully in all aspects of American political life.

The Hatch Act, more than any other piece of legislation touching the lives of postal and federal workers contains numerous restrictive provisions which have no good side and no substantive arguments in their behalf. These unnecessary restrictions are almost universally condemned. The Hatch Act constitutes a classic example of legislative overkill. To correct some evils, many of the most fundamental constitutional rights of the American people are being denied postal and federal employees. There is simply no good reason to deny an employee of the postal or federal service the right other citizens have to participate in the political process.

President Reagan's State of the Union message included the following statement on Hatch Act reform:

> We do not want to risk a situation in which Federal employees come to believe their advancement depends on espousing particular views, perhaps the political views of their superiors. Neither should electoral campaigning be allowed to mar cooperation between the political appointees of the President and the civil service establishment, a cooperation crucial to good government. As I have said in the past, the Hatch Act should not be changed or repealed.

H.R. 3400 would continue Hatch Act protection against coercion. Coercion or illegal use of official authority or influence is punishable by civil and criminal penalties such as suspension, removal, fines and imprisonment. Supervisors may not accept contributions from employees.

Arguments

Issue: Hatch Act Reform would politicize the Civil Service and reduce public faith in government.

Fact: False -- What postal and federal employees do politically on their own time should promote better governemt. We should encourage all to participate in selecting our nation's elected representatives.

Issue: Postal and federal employees may believe that their advancement depends on espousing certain political views, perhaps the views of their superiors.

Fact: H.R. 3400 would prohibit all partisan political activities on the clock, on site in a government uniform or in government vehicles. This bill specifically states an employee may not use, directly or indirectly, his or her official authority or influence to interfere with or affect the result of any election.

One could literally extend the Hatch Act restrictions to all working Americans who have a "boss" because they may feel their advancement depends upon sharing the political views of their superiors.

Aside from the question of infringement upon a basic right of an employee to be politically active is the fact that the Hatch Act, as being presently interpreted by the Office of Special Counsel has created a climate of doubt and uncertainty which too often results in causing postal and federal employees to completely stay out of the process rather than take a chance on violating the law.

Good government results from the largest possible participation in political life. As we see the percentage of eligible voters dwindle with almost each national election cycle, it is important that we encourage participation in this most basic right. Legislation such as HR 3400 does much to encourage this type of participation.

Perhaps a statement in favor of lifting these restrictions was best set out by the California Supreme Court in declaring a "little Hatch Act" of California unconstitutional.

> As the number of persons employed by government and governmental-assisted institutions continues to grow the necessity of preserving for them the maximum practicable right to participate in the political life of the republic grows with it. Restrictions on public employees, which, in some or all of their applications, advance no compelling public interest commensurate with the waiver of constitutional rights which they require, imperil the continued operation of our institutions of representative government.

Thank you Mr. Chairman and Members of this Committee for scheduling these hearings and inviting us to express the views of the American Postal Workers Union. I am pleased to be able to testify in favor of legislation to modify the Hatch Act, and I hope that the Senate will swiftly follow the lead of the House in moving H.R. 3400 or similar legislation.

I would be pleased to answer any questions you or the Members of this subcommittee might have.

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TESTIMONY OF

GERALD W. McENTEE, PRESIDENT

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES

BEFORE THE

U.S. SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON

HATCH ACT REFORM

FEBRUARY 24, 1988

American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, N.W., Washington, D.C. 20036 • Telephone (202) 429-1000 • Telex 89-2376 • Facsimile (202) 429-1293

Mr. Chairman my name is Gerald McEntee. I am President of the American Federation of State, County and Municipal Employees (AFSCME). Our union represents one and a half million state and local employees in forty-eight states and the District of Columbia.

Our union has a unique perspective on the issue of political restrictions on government employees. Given our large membership and the broad range of governments for whom they work, we have a great deal of experience in protecting the rights and representing the interest of public employees in jurisdictions that strictly restrict the political activities of their employees and those which have few, if any, such restrictions.

Mr. Chairman, as you may know, there are only nine states that, currently, severely restrict the political activities of their public employees in a manner similar to the federal government. In the other forty-one states, public employees, on their own time, may engage in most voluntary political activities. Some of these states, it should be noted, place some limitations on the political activity of public employees, such as prohibitions against soliciting campaign contributions from people receiving funds or doing business with their agency.

Our experience in these different states leads us to strongly support the reforms contained in H.R. 3400, which was overwhelmingly passed by the House last year. Our members, and, indeed, the entire nation, are best served by permitting government employees to participate fully in the political process. We come to this conclusion even though we believe that one of the major roles of our union is to protect our members from political coercion and to help create an atmosphere in which public employees can perform their jobs in a neutral, non-political and efficient manner.

We are convinced that these goals are best achieved by strong civil service statutes buttressed by collective bargaining agreements that provide for due process in the disciplining of public employees and strict merit systems for promotion. Equally important are anti-coercion statutes that severely penalize public officials who interfere with the free exercise of the political rights of their employees or use the powers of their office for unfair partisan purposes.

Restricting the political rights of public employees does not necessarily prevent political coercion or establish the neutral administration of government. Too often these political restrictions are selectively enforced and arbitrarily used to harass public employees. Let me just cite two examples that have come to our attention from our members in the State of Ohio -- a state which has one of the most restrictive statutes regulating the political activities of its employees.

In one recent case, we had to come to the aid of one of our members who is a dump truck operator for the Ohio Department of Transportation and was fired because he placed a "Robertson '88" sticker on his hard hat and anti-abortion material in the break area of the Departmental garage. In another case, the Republican Administration of the City of Hamilton threatened to discipline the employees of that town who put "Celeste for Governor" bumper stickers on their cars even though the placing of political bumper stickers is expressly permitted by state regulation.

The fact of the matter is that no governmental purpose is endangered by an employee wearing a political button or having a bumper sticker. However, the existence of little Hatch Acts gives some managers in the public sector an opportunity to harass public employees who disagree with them politically. It also provides managers a convenient excuse to take action against an employee they may dislike but who performs his or her job satisfactorily.

Our view that restrictions on the political activity of public employees are not necessary to prevent political coercion, is also borne out by the record of the Office of Special Counsel. Chapter 15 of Title 5 of the U.S. Code bars any state or local officer of an agency which receives federal funds from coercing someone to participate in or contribute to a political campaign, or using their official position to influence an election or running for partisan office.

Since the enactment of the Civil Service Reform Act of 1978, the Special Counsel has been charged with enforcing these prohibitions. We contacted that office and we were told that in the last nine years there have been only ten investigations of violations of the prohibitions against coercion or the use of official positions for political purpose and only one successful prosecution of these violations.

It is interesting to point out the single successful prosecution came in the State of Ohio, which as I have already pointed out, has a little Hatch Act that greatly restricts the political activities of its state and local employees. No prosecutions have been initiated in those states which do not restrict the political activities of public employees.

Mr. Chairman, the First Amendment rights of expressing one's point of view and organizing with others on their behalf are fundamental to our form of self governance. Without these rights our democracy would be an empty shell. Given the importance of these rights, they should be infringed upon only for compelling reasons, and that infringment should be narrowly drawn.

The advocates for retaining the existing Hatch Act believe that the current system of restricting the political activities of public employees is necessary to prevent the political coercion of government workers and assure the neutral and efficient operation of government. However, our union's experience in states without little Hatch Acts and the record of the Special Counsel are clear evidence that broad restrictions on the First Amendment of public employees are not necessary to protect them from coercion and to assure fairness in government.

These important goals can be achieved through a merit civil service system and very minor, but clear, restrictions on political activity such as those contained in HR. 3400.

In 1939, when only 32 percent of the federal workforce was under a classified merit system, there may have been a reason to have broadly limited the First Amendment rights of federal employees. In 1988, with nearly 80 percent of federal employees covered by a strict merit system, there is simply no reason to continue these restrictions.

We urge this committee to remove these restrictions and to permit federal employes to fully enjoy their First Amendment rights and participate to the extent of their choosing in our democratic process. By so doing, they can join in molding the future course of our nation as full citizens.

We ask the Committee to approve expeditously H.R. 3400 or similar legislation. I greatly appreciate this opportunity to testify before the Committee on Hatch Act Reform. If there are any questions, I would be pleased to answer them at this time.

SUMMARY OF THE LITTLE HATCH ACTS

Proposed revision of the Hatch Act, which governs the political activities of federal and postal employees, has prompted renewed interest in "Little Hatch Acts," a series of legal and administrative codes enacted by individual states to regulate the political activities of its public employees.

What follows is an updated and expanded version of a 1982 report prepared by the Public Employee Department of the AFL-CIO. It reveals that, while numerous minor changes have been made since the time of the last survey, these modifications have not significantly changed basic Little Hatch Act restrictions. More significantly:

- Thirty-six states expressly prohibit all state employees or classified state employees from using any official authority to influence elections or the political actions of others. (See Appendix #1)
- Thirteen states prohibit active participation in political management through participation in partisan political clubs, committees or organizations, or being an officer in such bodies or a delegate to a political gathering. (See Appendix #2)
- All state and classified employees in ten states are prohibited from actively participating in political campaigns through the management of a campaign or serving as an elected officer of a campaign. (See Appendix #3)
- Eleven states prohibit employees from soliciting votes, circulation or initiation of nomination petitions, or circulation of pre-election material. (See Appendix #4)
- Three states, South Carolina, Vermont and Virginia, lack any laws or administrative regulations governing the political activities of public employees. In these states, as well as others, the individual departments, agencies and municipalities are free to supplement the state regulations with additional restrictions.

The hodgepodge of rules that collectively form Little Hatch Acts have been very confusing and restrictive. But recent activity in state legislatures suggests that change is emerging. Many have begun to debate legislation that, while continuing protections against coercion and other abuses, is far more considerate of the constitutional rights of public employees to fully participate in the political process. For example:

- From 1987 to 1988 seventy-seven bills in twenty-eight states have been proposed to amend Little Hatch Acts. At least twenty-three of these bills propose to ease the restrictions against public employees.
- Many of the proposed amendments would effect specific groups of employees, like police officers. In many states, restrictions for police and the judiciary, in particular, are much stricter than the regulations that pertain to classified or all state employees.
- States that lack comprehensive collective bargaining legislation for public employees tend to prohibit or severely restrict most political activity.
- States with collective bargaining for public employees tend to be less restrictive regarding political activity.

The 1982 PED study has been updated by using "A Compilation of State Laws Governing the Political Activities of Public Employees," a 1987 Congressional Research Service publication. The data was further compared to state statutes and regulatory codes available at the Library of Congress. Proposed legislation was retrieved from the Electronic Legislative Search System (ELSS), which is available at the PED.

While we believe that this is the most comprehensive compilation of these rules available, we do not represent that we have obtained all existing statutes and regulations; the material we have located is as complete and up-to-date and accurate as possible.

The following, "Master Key to Report on State Rules Governing the Political Activities of Public Employees" defines the criteria on which Little Hatch Acts have been evaluated. Specific groups of employees, restrictions and protected activities are codified so as to be illustrated in chart form.

Exhibit #1 is a summary of the political activities and protections extended to classified and all state employees. For more detailed information, see the collective laws and administrative codes listed under the individual states.

MASTER KEY TO REPORT ON STATE RULES GOVERNING POLITICAL BEHAVIOR OF PUBLIC EMPLOYEES

KEY TO COLUMN 1

A. All state employees

B. Classified employees

C. Municipal & county employees

D. Teachers

E. Police (public safety or law enforcement)

F. Firefighters

G. Others, including judiciary, where included in the laws examined

KEY TO COLUMN 2 - Law restricts --(local, state, national or unspecified)

1. Activities that create a conflict of interest with employment; or involve integrity of office or position
2. Blanket prohibition of political activity
3. Becoming a candidate for elective office, or if elected, requires resignation
4. Active participation in partisan politics through such activities as solicitation of votes, circulation or initiation of nomination petitions, or circulation of pre-election materials
5. Active participation in an election through management of campaign, or through serving as an elected officer in the campaign
6. Active participation in the financial side of partisan politics
   6A. By soliciting contributions
   6B. By making voluntary contributions
7. Active participation in partisan political clubs, committees or organizations; being an officer in such bodies; being a delegate to a political gathering
8. Active participation in a nonpartisan or local election
9. Publicly expressing an opinion on partisan political subjects or candidates
10. Use of office or authority to influence the results of an election, or to influence political actions of any other person
11. Political activity during working hours, or while engaged in official duties, or using government resources

KEY TO COLUMN 3 - Protections

21. Political opinions, affiliations or endorsements may not be used as grounds for employment
    Variant: Applicants may not be asked about their political opinions or affiliations

22. Political opinions, affiliations or endorsements may not be grounds for promotion, demotion or dismissal

23. A public employee may not be required or solicited to contribute money or render any service for political purposes

24. Bumper stickers or other labels are permitted

25. Some political activity is specifically allowed

EXHIBIT #1

SUMMARY OF
RESTRICTIONS AND PROTECTIONS OFFERED TO CLASSIFIED AND ALL STATE EMPLOYEES

State	Comprehensive Collective Bargaining Legislation	#1	#2	#3	#4	#5	#6A	#6B	#7	#8	#9	#10	#11	#21	#22	#23	#24	#25
Alabama	no			x			x					x	x	x	x	x		x
Alaska	yes			x					x					x	x	x	x	x
Arizona	no			x	x	x			x			x		x	x		x	x
Arkansas	no		x									x	x	x	x		x	x
California	yes						x					x	x	x	x			x
Colorado	no											x	x	x				x
Connecticut	yes	x		x								x	x	x	x	x		x
Delaware	yes			x			x					x	x	x		x		
Florida	yes	x		x								x	x	x	x	x		x
Georgia	no	x		x	x	x	x	x	x		x	x	x	x		x	x	x
Hawaii	yes						x					x	x		x	x		x
Idaho	no			x								x				x	x	x
Illinois	yes			x								x	x	x		x		
Indiana	no			x									x	x	x	x		x
Iowa	yes			x								x	x	x	x	x		
Kansas	yes			x								x		x	x	x		

Exhibit #1 continued:

State	Comprehensive Collective Bargaining Legislation	#1	#2	#3	#4	#5	#6A	#6B	#7	#8	#9	#10	#11	#21	#22	#23	#24	#25
Kentucky	no		x	x	x	x	x	x	x			x	x	x	x	x	x	x
Louisiana	no		x	x	x	x	x	x	x			x		x	x	x		x
Maine	yes			x			x					x	x			x	x	x
Maryland	no												x			x		x
Massachusetts	yes						x					x	x		x	x		x
Michigan	yes			x			x						x			x		x
Minnesota	yes			x								x	x			x		x
Mississippi	no				x	x						x	x		x	x		
Missouri	no			x	x	x	x		x					x	x	x		
Montana	yes			x								x	x	x	x	x		x
Nebraska	yes						x		x			x	x	x	x	x		x
Nevada	no						x						x	x	x	x		x
New Hampshire	yes			x			x					x		x	x	x		x
New Jersey	yes	x										x	x	x	x	x		x
New Mexico	no			x					x				x	x	x	x	x	x
New York	yes						x					x	x	x	x	x		

Exhibit #1 continued:

State	Comprehensive Collective Bargaining Legislation	#1	#2	#3	#4	#5	#6A	#6B	#7	#8	#9	#10	#11	#21	#22	#23	#24	#25
North Carolina	no											x	x	x	x	x		
North Dakota	no												x					x
Ohio	yes			x	x		x		x			x		x	x	x	x	x
Oklahoma	no	x		x	x	x	x		x		x	x	x			x	x	x
Oregon	yes												x			x		x
Pennsylvania	yes			x	x	x	x	x	x			x		x	x	x		x
Rhode Island	yes			x			x					x	x	x	x	x		x
South Carolina	no																	x
South Dakota	yes											x	x	x	x	x		x
Tennessee	no				x	x	x					x	x	x	x	x		x
Texas	no		x	x								x	x	x	x	x		x
Utah	no			x					x			x	x	x	x	x		x
Vermont	yes																	
Virginia	no																	
Washington	yes			x			x						x			x		x
West Virginia	no			x	x	x	x	x	x			x	x	x	x	x		x
Wisconsin	yes			x									x	x	x	x		x
Wyoming	no			x								x	x	x	x	x	x	x

Appendix #1

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Iowa
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Minnesota
Mississippi
Montana
Nebraska
New Hampshire
New Jersey
New York
North Carolina
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Dakota
Tennessee
Texas
Utah
West Virginia
Wyoming

all
State
Not
many
official
authority

Appendix #2

Alaska
Arizona
Georgia
Kentucky
Louisiana
Missouri
Nebraska
New Mexico
Ohio
Oklahoma
Pennsylvania
Utah
West Virginia

NO Political
CLUBS
NO Committees
NO Delegates

Appendix #3

Arizona
Georgia
Kentucky
Louisiana
Mississippi
Missouri
Oklahoma
Pennsylvania
Tennessee
West Virginia

Can't
manage
on the
electoral offices
of Campaign

Appendix #4

Arizona
Georgia
Kentucky
Louisiana
Mississippi
Missouri
Ohio
Oklahoma
Pennsylvania
Tennessee
West Virginia

Can't
circulate
material
Pre-election
material

S. Carolina
Vermont
Virginia

SUMMARY
OF
LITTLE HATCH ACTS
1987

DRAFT COPY

MASTER KEY TO REPORT ON STATE RULES

GOVERNING POLITICAL BEHAVIOR OF PUBLIC EMPLOYEES

KEY TO COLUMN 1

A. All state employees

B. Classified employees

C. Municipal & county employees

D. Teachers

E. Police (public safety or law enforcement)

F. Firefighters

G. Others, including judiciary, where included in the laws examined

KEY TO COLUMN 2 - Law restricts --(local, state, national or unspecified)

1. Activities that create a conflict of interest with employment; or involve integrity of office or position
2. Blanket prohibition of political activity
3. Becoming a candidate for elective office, or if elected, requires resignation
4. Active participation in partisan politics through such activities as solicitation of votes, circulation or initiation of nomination petitions, or circulation of pre-election materials
5. Active participation in an election through management of campaign, or through serving as an elected officer in the campaign
6. Active participation in the financial side of partisan politics
   6A. By soliciting contributions
   6B. By making voluntary contributions
7. Active participation in partisan political clubs, committees or organizations; being an officer in such bodies; being a delegate to a political gathering
8. Active participation in a nonpartisan or local election
9. Publicly expressing an opinion on partisan political subjects or candidates
10. Use of office or authority to influence the results of an election, or to influence political actions of any other person
11. Political activity during working hours, or while engaged in official duties, or using government resources

KEY TO COLUMN 3 - Protections

21. Political opinions, affiliations or endorsements may not be used as grounds for employment
Variant: Applicants may not be asked about their political opinions or affiliations

22. Political opinions, affiliations or endorsements may not be grounds for promotion, demotion or dismissal

23. A public employee may not be required or solicited to contribute money or render any service for political purposes

24. Bumper stickers or other labels are permitted

25. Some political activity is specifically allowed

ALABAMA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	3, 6A (a1), 10(a1), 11	21, 22, 23, 25, (a2), (a3)	17-1-7, 36-26-38	No regulatory code. Each agency publishes its own regulations. A-G letter to Ethics Commission
C	10 (a2)	25 (a2)	17-1-7	

Footnotes:

(a1) Alabama - State employees cannot solicit campaign contributions from subordinate employees or coerce subordinate employees to work on political campaign or cause.

(a2) City employees may participate in state or county political activities, county employees in city or state ones, and state employees in county or city ones and city employees in county and state ones, including endorsing candidates and contributing to campaigns. All employees have the right to join local political clubs and organizations and state and national political parties. All employees have the right to publicly support issues, circulate petitions calling for or in support of referendums, and contribute freely to those of his choosing.

(a3) No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office or shall take part in the management or affairs of any political party or any political campaign, except on his own personal time and to exercise his right as a citizen to privately express his opinion and to cast his vote.

ALASKA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A		23, 24(b1), 25(b1)	39.25.178 39.25.160 (as amended by public law, Ch. 112, eff. 7/1/82)	No regulations under this number.
B	3, 7(b2)	21, 22, 23	39.25.160	
G	3(b3)			

Footnotes:

(b1) Alaska - A state employee may: express political opinions but may not display or distribute partisan political material while on official business; may serve as delegate to party convention; make contribution to party or candidate; and be appointed or elected to nonpartisan local public office.

(b2) A classified employee may not take an active part in the management of a political party above the precinct level.

(b3) An employee in the classified or partially exempt service who seeks nomination or candidacy for state or national elective political office must resign his state position.

ARIZONA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	3, 4, 5, 7, 10	21, 22, 24, 25 (c)	41-771, 772	R-2-5-102 OAG 78-26 OAG 87-028
E (Law Enforcement Merit System Council)	3		28-235	
G (Fish & Game Dept. Employees)	2, 10		017-213	
G (Disaster Preparedness, Search & Rescue Organizations)	2 (c1)		26-304 26-315	
G (Judges)	3, 7, (c2)		Constitution Art. 6-28	

Footnotes:

(c) Arizona - An employee of Arizona may express his opinion, attend informational political meetings, and vote. He may also sign a recall petition but may not circulate one. State employees may display badges, buttons and bumper stickers advocating recall. Restrictions do not apply to various elective and appointive school positions, but do apply to service as partisan appointees to election boards and to deputy registrars.

(c1) No public organization established under the authority of this chapter shall participate in any for of political activity nor shall it be employed directly or indirectly for political purposes.

(c2) Judges cannot actively take part in political campaigns other than their own for re-election or retention in office.

ARKANSAS

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (d5)	10 11	23 25 (d1)	3-1104 12-2105	
B	2, 10	21, 22		Art XVI, Sec 2
C	2	21, 22	19-1301, 19-1432	
E (Cities)	2	21, 22	19-1611, 19-1612	
E (State)	2 (d2)		42-406	
E (Sheriff's Depts.)	2		12-1133	
G (Judges)	4, 5, 6(d3) 3		3-1106 22-137	
G (Civ. Serv. Comm.)	3, 7		19-1420	
G (Div. of Social Services)	6, 10, 11	23	83-119	
G (Boards)	(d4)			

Arkansas continued:

Footnotes:

(d1) An employee shall not be discharged, demoted or transferred because of the service of such employee as a member of the General Assembly, service as an election official, jury service, or service as an elected official of any office which is not otherwise prohibited by the Constitution.

(d2) Arkansas State Police shall be required "to remain constantly aloof from politics."

(d3) Judges of municipal, circuit, chancery and Supreme Courts shall not participate in the campaign of any candidate for elective offices.

(d4) No paid employee of a political party or candidate for statewide election is eligible to serve on a County Board of Election Commission or as an election judge or clerk. No candidate for or holder of public office in the state shall serve as a member of the State Board of Education.

(d5) The Arkansas Constitution has several provisions restricting dual office holding. Certain specified office-holders and judges are ineligible for a seat in either house of the state Assembly; state civil office is denied elected Senators or Representatives.

CALIFORNIA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A, C, D, (c)			9.5-3201, 9.5-3202	
	10		9.5-3204	
	6A		9.5-3205	
	11		9.5-3206, 9.5-3207	
		25	9.5-3208, 9.5-3209	
		21, 22	19703	
	10 (c)		86300 (a), 87100	

Footnotes:

(c) Employees of some state universities are covered by restrictions on the political activities of public employees. Employees may not solicit knowingly from other public employees. Public officials in state or local government may not use position to influence a decision in which he has a financial interest.

COLORADO

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	11 (f)		1-45-116	
B, D	11 (f)	25		10-4-1
B, D	10, 11	21	24-50-132 24-50-133	

Footnote:

(f) No leave without pay will be granted to allow participation in politics.

CONNECTICUT

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	1			5-266a-1
B		21, 22	5-227	
B, G (Judicial Department)	3, 10, 11	23, 25	5-266 a	
B	1, 3 (g), 10, 11	23, 25		CT Personnel Div., General Letter 214B 12/10/85

Footnotes:

(g) A municipal employee shall receive leave without pay to accept a full-time elective state or municipal office of up to 4 years; he then must be reinstated with equivalent pay and accumulated seniority, retirement, fringes and other service credits. A classified state employee may be a candidate for a municipal office. He may be active in a nonpartisan campaign.

DELAWARE

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B, D	3 (h1)		29-5110	
A	10		29-5954	
B	11, 6A	23	29-5954	
G (Welfare Dept.)	10, 2		31-105 See A-G Opinion 78-016 (1978)	
G (Elections Dept.)	10, 2		15-219	
B	10, 11 (h1)	21, 23		Merit Rules 18.0400, 15.0718, 15.0803

Footnotes:

(h1) A list of reasons for disciplinary action includes "unlawful political activity," and the maximum penalty specified for a first offense is dismissal.

DISTRICT OF COLUMBIA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	(YY)	25(yy)	5-7321 et seq. (subchapter III) of U.S. Code	5-733 of Code of Federal Regulations Ch. 25, Sec. 2500 of D.C. Office of Personnel

Footnotes:

(yy) District of Columbia - D.C. personnel are covered by the federal rules (copies supplied), which in essence permit only participation in nonpartisan elections or elections in a municipality or political subdivision specifically named by OPM (listed in CFR).

FLORIDA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	11, 1, 3 (i1)	25		22A-13.02
D	(i2)			Chapter 6B-1 of the Code of Ethics of the Education Profession in Florida (Rules of Professional Practices Council).
A, E	3 (i3)		99.012	
A, C	10 (i5)	23 (i4), 25	104.31 (b)	
B	10, 11	21, 22	110.233	
A, C		25 (i6)	112.046	
A	11		106.15	

Footnotes:

(i1) Florida - Exceptions: Employee is seeking or holding local public office; candidacy is approved by agency head and Department of Administration as involving no conflict of interest. Conflict of interest is defined to mean a full-time office, or a campaign that will involve state material or time. An approved candidate may be granted leave without pay or may use annual or compensatory leave. An employee who becomes a candidate without approval shall be deemed to have resigned.

Florida Footnotes continued:

(i2) Educator shall not interfere with a colleague's exercise of political rights.

(i3) Florida law requires candidates for state, county or municipal office to resign from one office in order to run for another. This does not apply to political party offices, however, nor to appointive unsalaried boards. Resignation is not required of subordinate personnel, deputy sheriff, or police office unless the incumbent has employment authority over the would be candidate; however, such employees must take leave without pay during his candidacy.

(i4) Noncoercive solicitation is allowed.

(i5) This provision does not limit political activity of elected officials or candidates, agency or commission heads, members of the legislature, or members of state cabinet.

(i6) An employee of the state or any political subdivision may serve on the county or state executive committee of a political party.

GEORGIA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	1, 3 (j1), 4, 5, 6A, 6B (j2), 7, 9, 10, 11, (j3)	21, 23, 24, 25, (j4)		Rule 3.500, Rules & Regulations, State Personnel Board
A	1, 3 (j1)		45-10-70	
A		23	45-11-10	

Footnotes:

(j1) Employees can contribute to a governmental program financing federal, state or local elections as permitted by federal and state law. Also, state employees can direct, manage, control, participate in, contribute to and accept contributions for his own campaign for certain offices.

(j2) An employee cannot be a candidate for nomination, election or appointment to any full-time elective public office or full-time elective office of a political party or political organization. Employees can, however, offer for and hold any elected or appointed office of a political subdivision, political party or political organization; provided the office is not full-time, does not conflict with the performance of the employees official duties and is not otherwise prohibited by law.

Georgia footnotes continued:

(j3) Georgia - An employee in the classified service shall not participate in political activity while on duty or under color of office or position. He shall not address a convention, caucus, rally etc. to support or oppose a candidate for public office or political party office.

(j4) An employee in the classified service, acting in his capacity as a private citizen, may: express a personal opinion privately or publicly on political candidates and issues; display badges, stickers, political picture, or buttons as long as such display is not under color of office or position, or while on duty or on state property; be a member of political party or other organization and participate in its activities to the extent permitted by Federal and State laws, rules and regulations; attend political meetings as a spectator; sign a petition for legislative action and for candidate nomination; be active in non-partisan legislative issues; serve as non-partisan worker at the polls; and contribute to governmental program for financing elections.

HAWAII

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (k1)	10, 6A,	22, 23 (k2), 25 (k3)	76-16, 76-91, 76-92	
		22	76-92	
C (k4)	2, 3			

Footnotes:

(k1) Hawaii - 20 listed exceptions include teachers, elected officials.

(k2) No person shall, in any room or building occupied for the discharge of official duties by any public officer or employee solicit in any manner whatsoever or receive any contribution from public officers or employees.

(k3) Civil servant may express political opinions, belong to a political organization, contribute anything of value voluntarily.

(k4) In addition to anti-kickback provisions, Honolulu requires appointed commissioners to resign to run for any elective office, and to refrain from any political activity.

IDAHO

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B (1)	3 (2), 10	23, 24, 25 (1)	67-5302 67-5303 67-5311	

Footnotes:

(1) Idaho - Idaho personnel system exempts judges, state system teachers, employees and officers of named commodity commissions, and others. State employees may express opinions privately and publicly, participate actively in partisan or nonpartisan political activities, attend political meetings, sign petitions, contribute, actively support a candidate, serve as election judges--so long as non of these activities compromise neutrality, efficiency, or integrity.

(2) No classified employee shall be a candidate and hold elective office in any partisan election, however, classified employees can be a candidate and hold office in any nonpartisan election.

ILLINOIS

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	3 (m1)		127-63b112d	
B	10, 11		24 1/2 - 38s 24 1/2 - 38t	
B		21, 23	24 1/2 - 38u 24 1/2 - 38v	
C (m2)	10, 6A, 4 (m3)		23-12-21.7	
C (m4)	10	21		
C, G (m5)	6A	23	42-323.22	
			42-323.23	
	11		42-323.24	
	2 (m5), 11		42-323.25	
E (State Highway)		21, 22	121-307.11 (1969)	
E (Sheriffs)	2		125-63	
G (m6)	2, 3, 4, 5, 7		15-302-7	
G (m7)	2, 3		46-6-70	
G (m8)	2, 3 (m8)		110A-67 (Supreme Court rules)	
G (m9)	7		127-63b105; 16 1/2 - 102.3	

Illinois continued:

Footnotes:

(m1) Illinois - A state employee under jurisdiction of the Department of Personnel shall receive leave time without pay to serve in elected state office.

(m2) Employees whose duties pertain to eligibility for, or amount of, public aid, in any local government unit receiving state funds.

(m3) Prohibited activities include distributing tickets to political meetings, in addition to distributing campaign literature and nominating petitions; assisting at the polls as a partisan also is banned.

(m4) Employees in county classified service.

(m5) No sanitation employee in the classified service shall take part in the management or affairs of any political party or in any political campaign. An employee shall have the right to hold any public office, either by appointment or election, that is not incompatible with his duties as an employee of the district.

(m6) Auditor General and deputy auditor general.

(m7) Election commissioners in municipalities with a population greater than 2,000,000.

(m8) A judge or a candidate for judicial office may not: act as a leader or hold any office in a political organization; except when a candidate for office or retention, participate in political campaigns or activities or make political contributions; engage in any other political activities except on behalf of measures to improve the law, the legal system or the administration of justice. A judge should resign his office when he becomes a candidate either in a party primary or in a general election for non-judicial office.

(m9) Director of Personnel; commissioner and deputy commissioners of banks and trust companies.

INDIANA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	11		4-15-10.2	
A		25		Sec. 2 (SLL24:113)
B		21, 23		31 IAC 2-15-1
B (n1)	3	22, 23	4-15-2-40	
B (Career Bipartisan)		23, 25 (n1)	4-15-2.5-6	
D		25 (n2)	20-6.1-6-14	
E, F	(n3)		3-14-1-6	
E, F	(n4)		36-8-3-12	
G (Insurance Dept.)		23		

Footnotes:

(n1) Indiana - Indiana state service is divided into classified and unclassified employees. The unclassified state employees are listed in Section 4-15-2-7. In addition, there is a career bi-partisan personnel system; the groups included in this system are listed in Section 4-15-2.5-1.1. These employees may be promoted, demoted or dismissed for political reasons. The political affiliation ratio is in Section 4-15-2.5-4. Health and welfare department employees are included in the merit system, but Attorney General's Opinion (1977) has held that state police are not. An employee in the classified system will be granted leave without pay on request, to become a candidate for local office; should he become a candidate for state or national office he is held to have resigned.

Indiana footnotes continued:

(n2) A teacher cannot be suspended or dismissed for being a candidate unless the activity impairs job performance; then the suspension is for the period of the impairing activity.

(n3) A state police department civilian employee or police officer or firefighter (including a special duty, auxiliary or volunteer police officer or firefighter) of a political subdivision cannot solicit votes or campaign funds, challenge voters or perform any other election related function while wearing any identifying insignia or article of clothing that is part of an official uniform or while on duty. This provision does not prohibit voting while in uniform or on duty.

(n4) Police and firefighters may not perform political acts while in uniform. However, city police and sheriffs may campaign as candidates while not on duty or in uniform.

IOWA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	10, 11	21, 22		Iowa Personnel Dept. Rules Sec. 16 581-16.1(19A)
A	10, 11	23	721.3 through 721.7	
B	3(01), 10, 11	21, 22	19A.18	570 IAC 16.1
C, E, F (o2)	3 (o3), 6A (o4) 10, 11	21,	400.6 400.29	
C	4		Op. Atty. Gen. 8/29/73 Op. Atty. Gen. 3/4/69	

Footnotes:

(o1) Iowa - A state employee is not precluded from holding unpaid office, or office with only token pay. He is automatically receives leave without pay to run for paid office.

(o2) All municipal employees (with specific exceptions) of cities over 15,000 population. In all other cities, only police and firefighters.

(o3) An employee shall receive leave without pay on request to campaign as a candidate. He may not campaign while on duty. An early Attorney General opinion held that police might not receive leave to run; this may have been superceded by this law, which was amended several times since that opinion.

(o4) An employee may not solicit contributions of money or other thing of value from someone whom he supervises.

KANSAS

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B		22	75-2949	
B	3 (p1), 10	23	75-2953	
B		21, 22		1-15-1
E (Sheriffs and employees in certain counties)	4, 6B, 7		19-4315	
		21, 22	19-4319	
	3, 10	23	19-4330	
G (p2)	6A (p2)		46-236	

Footnotes:

(p1) Kansas - State classified employees must resign to run for all but non-partisan election or county commissioner.

(p2) State legislature - officers, employee or candidate is barred from soliciting various things when he knows the donor wants to influence his actions; one exception is a contribution reported in compliance with the campaign finance act.

KENTUCKY

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	3		Constitution of KY #165	
B	3, 4, 5, 6A, 6B, 7, 10	21, 22, 23 25	18A-140	
B	3, 4, 5, 6A, 6B (q1), 7, 11	24, 25		101 KAR Personnel Rule Sec. 1:160
B		22		101 KAR Personnel Rule Section 7-2
B, G (Public Commissioners and employees)	2, 10		211.250	
B		21, 23	121.310 121.320	
C (Urban County)		21, 22, 23	67A.310	
C (City)	2	21, 22	90.220 90.390	
D		21, 22	161.162	
E (County)	6A, 10, 11	21, 22, 23	78.435	
E (State)	2, 6A, 6B	23	16.170	
E, F (City or County)	11	24, 25 (q2)	95.017	

Kentucky continued:

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
E, F (2nd & 3rd Class Cities, Urban Counties)	11 (q3)	21, 22, 23	95.470 OAG 77-22 OAG 75-198	
F (Fire Protection Districts)	2, 6A, 6B	21, 22	75.150	
G (Disaster & Emergency Organizations)	2		39.431	

Footnotes:

(q1) Kentucky - It is lawful for classified employees to make voluntary cash contributions to political parties, candidates or organizations, but it is unlawful to make contributions of goods, labor or service.

(q2) Uniformed city or county police or firefighters may run for office, use bumper stickers or buttons, work at the polls, register and purge voting lists, contribute, and join and lead political groups, but always while off duty and out of uniform.

(q3) A 1975 OAG held that this ban applies only to election of individuals to office, and does not apply to other political matters of interest to fire and policemen. The section was held not to ban contributions by unincorporated lodges of Fraternal Order of Police.

LOUISIANA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	3 (r1)	21 (r1)	42:61-65; 14:139	
B	2, 3, 6A, 6B, 10, 7, 4, (r2)	21, 22, 23, 25 (r2)		Ch. 14, Civil Service regulations, 3/10/81
B	2, 3, 5 (r2), 6A, 6B, 7, 10	23	Constitution of Louisiana Art. 10-9	
B		23	14:136 (r2)	
C (over 100,000)	3, 6A, 6B, 10	21, 22	33:2429	
D		25 (r2)		OAG 76-1113
E, F	6A, 10		33:2500	
E, F	3, 5, 6A, 6B, 7, 9, 10	21, 22, 25(r2)	33:2504, 33:2531, OAG 10/26/60-62 p. 221	
G (Judges)	3 (r3)		42:39	

Footnotes:

(r1) Louisiana - has a ban on dual office-holding, and a section banning "political payroll padding."

(r2) A classified employee may serve as an official poll-watcher; so may police and firefighters. He may sign a recall petition, but may not take an active part in a recall. He may actively participate in a bond, tax or constitutional questions. Teachers are exempted, as being unclassified employees.

(r3) Including offices in political party organizations.

MAINE

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	6A, 11	25 (s1)	5 MRSA 14	
A	3 (s1), 6A, 10, 11	23, 24 (s2), 25		Personnel Bulletin 13.1D 2/8/84
B	3 (s1), 6A, 10	23, 25 (s1)	5 MRSA 679-A	

Footnotes:

(s1) Maine - No state employee may interfere with nonpartisan political activity of any state employee provided such participation does not result in financial gain beyond regular compensation. A classified employee may be a candidate in an election if none of the candidates represent a party that received votes for presidential electors at the preceding presidential election.

(s2) No federal or state law prohibits the wearing of badges and buttons, but regulations of the agency or department may limit or restrict that activity in the workplace.

MARYLAND

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (t1)	11	23, 25	Art. 33 Sec. 28.1	
A		22, 23		MD Admin. Code tit. 6-.01.01.47
E (t2)	11	25 (t3)	Art. 27, Secs. 727-728	
G (Judges)	3, 4, 5, 6, 7			MD Rule 1231, Canons of Judicial Ethics, Bd. of Ethics Op. No. 126
G (Board of Elections,	1 (t4), 3, 4, 5, 6, 7, 10		Art. 33, Sec. 2-7 Art. 33, Sec. 26-3	63 A.G. Op. 6/2/78 Board of Ethics Op. No. 106 No. 126

Footnotes:

(t1) Maryland - Participation in politics or political campaigns and the free expression of political opinions by employees of the state, or of any county, municipal corporation, city, political subdivision, public authority, body political or board of education shall not be prohibited.

(t2) Law enforcement officers include the police force of the state, Baltimore City, any county, any incorporated town or city, and the police force of any bicounty and other state agencies or facilities.

(t3) A law enforcement officer has the same rights to engage in political activity as are afforded any state employee.

(t4) A state officer or employee in a very sensitive position may be precluded by ethical considerations from running for political office, i.e., a tax assessor is prohibited from running for elective office or partisan party office.

MASSACHUSETTS

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A, C	10		56-36	
	6A	25 (u1)	55-13, 15	
	11		55-14	
		23 (u2)	55-16	
		22	55-17	

Footnotes:

(u1) Massachusetts - This section contains non-bribery provisions if the employee knows of an interest in a matter over which the employee has responsibility.

(u2) Non-elected employees may make contributions and may belong to political organizations or committees.

MICHIGAN

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	3 (v1)	25 (v1)	15.402	Civil Service Commission Rules, Sec. 7, 8.5 (v1)
	11		15.404	
	6A	23	15.405	
C		25 (v1)	15.403	
	11		15.404	
	6A	23	15.405	

Footnotes:

(v1) Michigan - An employee of state classified civil service and of political subdivision of the state may belong to a political party; be a delegate to a convention; and engage in partisan political activities. He may become a candidate for local partisan or nonpartisan office; he shall receive a leave of absence to be a candidate for state or national office. His partisan activities must not conflict with his duties, and he must obtain written approval of his activities.

See Council 11, AFSCME v. Civil Service Commission 87 Mich. App. 420; 274NW 2d 804 for court decision that the Civil Service Commission may not regulate off-duty activities.

MINNESOTA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	3, 10, 11	23	43.28 210A.81	
A, C		25 (w2)	43.28; 210A.81	
B	3 (w1), 10, 11	23	43.A 32	
E (w3)	2		387.41	
F (w4)	6A, 6B	23	420.16	
G (Labor Mediator)	10		179.03	
G	(w5)		268.12 Subd. 5	

Footnotes:

(w1) Minnesota - Any classified service employee shall be granted leave of absence for candidacy or election to federal or state public office.

(w2) No political subdivision may impose any additional limitations on political activities of its employees.

(w3) Sheriff's Department employees.

(w4) Fire Department Employees.

(w5) No employee or officer of the Department of Economic Security may reveal lists or names obtained in the administration of its office to or for a political candidate or party.

MISSISSIPPI

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B —	4, 5, (x1)	22, 23 (x1)	21-31-75	No Regulatory Code
B	4, 5, 10, 11	22, 23	23-15-871	
C (Municipalities)	(x2)	22, 23	21-31-27; 21-31-1	
C (Municipalities)	6A, 6B, 10 (x3)		21-5-21; 21-9-71; 21-8-31	
E (Highway Safety Patrol)	3, 4, 5, 6A, 6B	23	45-3-11	
G (x4)	10		25-9-145	

Footnotes:

(x1) Mississippi - No employee under civil service is obligated to contribute or render service to any political party or service and may not be penalized for refusal to do so. No such employee may engage in a political campaign as a representative of any candidate or shall engage in pernicious activities.

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(x2) If any person holding any office, place, position or employment subject to civil service, actively participates in political activity in any primary or election in a municipality where he is employed, it shall be deemed cause for removal.

Mississippi footnotes continued:

(x3) Under both the commission form and the council-manager form of municipality, civil service employees except the mayors, councilmen and commissioners may not solicit, contribute to, or influence another persons activities regarding political actions at any election held in such city. Under a mayor-council form of government, civil service employees except mayors, councilmen and commissioners may not solicit or attempt to influence any person's vote at any election held in such municipality.

(x4) Elected state officials, elected state district officials, appointed state officials or members of the judiciary.

MISSOURI

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B (x1)	3 (x2)		36.150	1 CSR 20-3
	4, 5, 7		36.150	
	6A	23	36.150	
		21, 22	36.170	

Footnotes:

(x[illegible] Missouri - State employees exempt form the merit system include boards and commissions; and certain professional, executive, administrative and clerical positions. (36.030)

(x2) Prohibition applies to partisan or non-partisan public office, unless employee either resigns or obtains a leave of absence, where office is determined to be in conflict with his duties.

MONTANA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	10, 11 (y1)	23, 25 (y2)	13-35-226	
B	3, 10	21, 22, 23		Merit system regulations 2.23.601 2.23.602

Footnotes:

(y1) Montana - An employer, whether corporation, individual, or public officer or employee, may not (1) include political material in pay envelope; (2) exhibit in workplace any threat or promise designed to influence political action of his employees.

(y2) Public employees may express political views.

NEBRASKA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (aa1)	7, 11 (aa4)	25 (aa4)	81-1315 23-3001	
A		21, 22	23-2513	
B (aa2)	6A, 10 11	21 22, (aa3) 23		17.001 17.003
G (Personnel)	7, 11			Nebraska Department of Personnel Rule 15.11 - 15.11.2

Footnotes:

(aa1) Nebraska - Exemptions include personnel of certain state officers, courts, Public Commission, various categories of higher education facilities, the Nebraska Brand Committee and the legislative branch of the government.

(aa2) Merit system classified and nonclassified employees.

(aa3) All employees are prohibited from discriminating in favor of or against an officer, employee, or applicant on account of his/her political contribution or permitted political activity at any level of state or local government.

(aa4) No employee of the state or any political subdivision may engage in political activity while in uniform. Otherwise, he may not be prohibited from political participation while off duty unless specifically restricted by state or federal law.

NEVADA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	6A (bb1) 11 (bb2)	25 (bb3) 21, 22, 23		Rule XI, Secs. C & E State Administrative Manual, 11th Ed. 1980
B	6A (bb1), 11 (bb2)	23 (bb1), 22		Nev. Admin. Code 284.770

Footnotes:

(bb1) Nevada - An employee is prohibited from directly or indirectly soliciting or receiving any assessment, subscription, monetary or nonmonetary contribution for a political purpose from anyone who is in the same department and who is a subordinate of the solicitor.

(bb2) An employee is prohibited from engaging in political activity during the hours of his state employment, or at anytime engaging in political activity for the purpose of securing preference for promotion, transfer, or salary advancement.

(bb3) No employee shall engage in political activity to an extent that it impairs his attendance or efficiency as an employee.

NEW HAMPSHIRE

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	3 (cc1), (cc2), 10	21, 22, 25 (cc3)	RSA 98:18-19	Rule 8, Sec. 7 1 NH OAG 214
B	6B		70:2(vi)	
B		23	664:4a	

Footnotes:

(cc1) New Hampshire - In the event that a classified employee is considering engaging in any political activity he or she is cautioned to consult with his or her appointing authority early enough to permit an advance determination or to whether the same is permissible by such authorities as may be called upon by law to make such determinations.

(cc2) No employee shall hold any renumerative elective public office which conflicts with his employment.

(cc3) Any employee of a non-federally assisted agency may do non-renumerated volunteer work for a political committee, party, or candidate. (1 N.H. Op. A.G. 214)

Except for presidential preference and delegate primaries no contribution of money or thing of value, whether tangible or intangible, may be made to a candidate or political party.

NEW JERSEY

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	10, 11		11A:2-23	
B (dd1)	1, 10, 11	21, 22, 23, 25 (dd2)	11A:2-23 11A:3-4 11A:3-5 11A:7-1	4:1-21.3 4:1-16.9 4:1-21.6
G (Public Office Holder (dd3)	6B	23	19:34-42	
G (County Prosecutor, etc.)	3, 9, 7, (dd4)		2A:158-21	

Footnotes:

(dd1) New Jersey - Classified service does not include elected officers, appointees, boards and commissions, legislative employees, judges and certain legal counsels, public schools and state institutions teachers, heads and administrators of state agencies, law officers of counties, municipalities or school districts, and other designated employees.

(dd2) An employee may on his own time participate in political activities insofar as it does not impair his usefulness in his official position.

New Jersey footnotes continued:

(dd3) No holder of public office or position not filled by election by voters shall contribute to the nomination or the election of any person to public office or party position, but this provision shall not apply to any person holding an appointed office or position the term of which is fixed by law. No person shall invite, demand or accept payment or contribution from such persons for campaign purposes.

(dd4) No county prosecutor or legal assistant to a prosecutor may be a candidate for, or hold public office or political organization office, or publicly endorse a candidate. He may, however, be a delegate or alternate to a national convention of a party.

NEW MEXICO

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A, B (ee1) (ee3)	3 (ee2), 7	22, 23, 24,		State 10, 1125 Personnel Board Regulations SPB Rule 18.1 through 4
B	3 (ee2), 7, 11	21, 25	10-9-21	

Footnotes:

(ee1) New Mexico - The Personnel Act covers all state positions except elected or appointed officials, policy-makers, directors of department divisions, those in educational institutions and schools, governor's staff, militia and state police employees, vocational school students up to age 22, certified school instructors employed prior to 7/1/74 under the Act.

(ee2) Incumbent not covered by the Hatch Act may be candidate if he is authorized to take leave without pay for the entire campaign. He may not hold office while employed in the service, except for being a local school board member, an elected board member of any post-secondary educational institution or an elected officer.

(ee3) Incumbent personnel retain these rights: To express opinions; wear "non-distracting" political badges; serve as convention delegates; attend rallies; sign nominating petitions; make voluntary contributions; serve as election officials; and engage in political activities on their own time.

NEW YORK

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B (ff1)	6A, 10, 11	21, 22, 23	7-107	
C (ff2)	3, 7		2-27	

Footnotes:

(ff1) New York - Civil services of the state or of any civil division thereof; excludes unclassified employees.

(ff2) A member of a municipal civil service commission or personnel officer.

NORTH CAROLINA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (gg1)	10, 11	21, 22 (gg2) 23 (gg2), (gg3)	Art. 5, Ch. 126-13 126-14	Ch. 8, Subch. 8-A, Sec 0200

Footnotes:

(gg1) North Carolina - State employee: shall mean all employees subject to any part of the State Personnel Act. School employees are excepted, as are other employees (See 126-5).

(gg2) A state employee subject to the Personnel Act, probationary state employee, or temporary state employee, who without probable just cause falsely accuses a person of violating this section shall be subject to discipline or termination.

(gg3) No head of any state department, agency or institution or other state employee exercising supervisory authority shall make, issue or enforce any rule or policy the effect of which is to interfere with he right of any state employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the state.

NORTH DAKOTA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	11	25 (hh1)	44.08-19 39.01-03 39.01-04 39.01-05	
A	11		34-11.1-02	
D	10 (hh2)			N.D. Admin. Code 67-03-01-04

Footnotes:

(hh1) North Dakota - A public employee may be a member or an officer of a political organization; attend political meetings; contribute to or otherwise support candidates; and seek or accept public office.

(hh2) The educator shall refrain from exploiting the instructional privileges of one's professional position to promote political candidates or partisan activities.

OHIO

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B (ii1)	3(ii2), 4(ii3)	21, 22, 23, 24	ORC 124.57	123:1-46-02 Ohio Monthly
	6A, 7, 10	25 (ii4)	ORC 124.60 ORC 124.61	Record Dec. 1981

Footnotes:

(ii1) Ohio - "Classified service" means all persons in active pay status serving in the competitive civil service of the state, counties, cities and school districts thereof, and civil service townships.

(ii2) No classified employee may accept: candidacy in a partisan election; candidacy for public office if nomination was obtained in a partisan primary or through political party efforts; a party sponsored appointment to an office filled by partisan election.

(ii3) A classified employee is prohibited from partisan writing for publication; writing or making speeches on behalf of a partisan candidate or party; participation in caucuses or political action committees of political nature; and partisan activities at the polls.

(ii4) Permissible activities include: written or oral expressions of opinions; financial contributions; badges, buttons, stickers, etc. worn, or displayed on personal vehicles or at home; attendance at political meetings, signing nominating petitions; and activities involving non-partisan issues and elections.

OKLAHOMA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	6A		74-3114	
	1, 3, 4, 5, 6A, 7 (jj1), 9 (jj2), 10 11 (jj3)	23, 24, 25 (jj4)	74-4242 74-4245	

Footnotes:

(jj1) Oklahoma - No classified employee shall participate in fundraising for a candidate or political party. He may not act as a watcher at the polls in behalf of a political party or drive voters to the polls on behalf of a political party.

(jj2) He shall not endorse or oppose a candidate in a political advertisement, literature or campaign, or make a public address in support of a candidate.

(jj3) He shall not engage in political activity while on duty or in a uniform that identifies him as a state employee.

(jj4) An employee may: express opinions privately, belong to a political party and participate in its activities subject to state restrictions, attend political gatherings, sign petitions, contribute, be active in nonpartisan issues and act as a nonpartisan official in elections.

OREGON

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (kk1)	11	23, 25 (kk2)	260.432 260.993	

Footnotes:

(kk1) Oregon - "Public employer" includes any board, commission, committee, department, division or institution in the executive, administrative, legislative or judicial branch of state government and any county, city, district or other municipal corporation or public corporation organized for a public purpose including a corporate body formed between municipal or public corporations.

(kk2) A public employee may express personal political views, and engage in political activity except to the extent prohibited by state law when on the job during working hours.

PENNSYLVANIA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B	3			103.11
B (LL1)	4(LL2), 5, 6A, 6B(LL4), 7, 10	21, 22, 23, 25(LL3)	71-741.3 71-741.904 71-741.905a 71-741.905 71-741.906	
C (County Board of Health)	4, 5, 7, 10	25 (LL2)	16-2193.1	
C (2nd Class Cities)		21, 22, 23	53-23457	
E, F	2	21, 22	53-46190 53-46193	
E, F (First Class Townships)		21, 22	53-55644 53-55647	
E (Incorporated Towns)	2	21, 22	53-53270 53-53273	
F (3rd Class Cities)		21, 22	53-39870 through 2	
F (Incorporated Towns)		21, 22	53-53320 53-53323	

Pennsylvania continued:

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
G (Parole Board)	2, 4, 5, 6A, 6B, 7, 10		61-331.16	
G (Vocational Rehabilitation)	2, 5, 6A, 10	23	43-681.11	

Footnotes:

(LL1) Pennsylvania - All civil service employees are covered, including parole board, Department of Health, Department of Education except for state college teachers, and any other department required to be under a merit system or meeting certain criteria. Non-civil-service employees include appointees, boards and commissions, certain administrative and supervisory personnel of state agencies, faculty of educational institutions, unskilled labor and other designated exceptions. According to the office of the Attorney General, generally Pennsylvania has no limitations on political activities of non-civil-service employees.

(LL2) Prohibitions include: No participation in political management or campaigns including organization, petitions, conventions, solicitation, candidacy for holding public office, or the use of position or office to influence political activities. Presence at the polls or within 50 feet is limited to voting as speedily as possible. Police officers may temporarily enter the polling place to preserve law and order.

(LL3) Civil service employees may attend meetings and express individual opinions.

(LL4) Contributions are prohibited in 741.905, but the language is far from clear. They are permitted "to the extent such contributions are not prohibited by law" in the Election provision, 25-2374.

RHODE ISLAND

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B (mm1)	3 (mm2) 6A, 10, 11	21, 22, 23 25 (mm3)	36-4-2; 36-4-51-54 17-1-5	
C	3 (mm4)	25 (mm4)	17-1-5.1	

Footnotes:

(mm1) Rhode Island - The classified service comprises all state employees excluding specific state officers and administrators, state library services, judges and other court personnel, attorneys and other such counsels, academic staffs of the state institution schools not under the board of regents, election officials and employees, state police and sheriffs' departments, and other employees so designated as unclassified.

(mm2) A classified employee or a member of the Personnel Appeal Board is prohibited from running for state elective office; he may become a candidate for municipal elected office.

(mm3) During work hours or on state property a classified employee may not engage in political activities except that he may attend and vote at a party caucus, primary or election. In non-work time, he may attend political meetings, and privately express his views.

(mm4) A municipal employee may hold state elective office; he may hold a municipal elective office in a city or town other than where employed. This provision does not apply to municipal school teachers.

SOUTH CAROLINA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A		25		A.G. Op. 8/16/72

Footnotes:

South Carolina - According to the office of the Attorney General, there are no laws governing political activities if state employees. Some agencies and municipalities have regulations concerning candidacy for office, but these are the exceptions to the general practice.

SOUTH DAKOTA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (oo1)	10		SDCL 2-12-10	
B (oo2)	10, 11	22, 23, 25(oo3)	SDCL 3-6A-13 3-6A-14 3-6-27	55:01:27
E (State Highway Patrol)	10	21, 22, 23	SDCL 3-7-20 3-7-25	55:02:13:19 55:02:13:20

Footnotes:

(oo1) South Dakota - No state employee shall lobby the Legislature in a matter which affects his pecuniary interests.

(oo2) Career service includes all executive branch positions including conservation officers of game, fish and parks department, but excluding elected state officers, boards and commissions, certain administrative state positions, the governor's office, bureaus of planning and finance and management, teaching and professional personnel of state institutions, law enforcement civil service, cement plant employees, and other such excluded categories.

(oo3) A career service employee may express opinions; take an active part in political management or campaigns except during working hours; and hold a political office, except as prohibited by law, which does not interfere with his job responsibilities.

TENNESSEE

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	10	23	2-19-202	
A (pp1)	6A (pp2), 10, 11	21, 22, 23 (pp2), 25 (pp3)	2-19-201 to 208	
B (pp4)	4, 5, 6A, 10	21, 22		Ch. 1120-2-2 (pp4)

Footnotes:

(pp1) Tennessee - Except elected officials, candidates, teachers, members of the Governor's Cabinet, and his staff.

(pp2) This clause includes no-bribery features as well as a ban on political soliciting. One who supervises, or controls employment, may not solicit public employees. Voluntary contributions are expressly allowed.

(pp3) No rule or regulation which has been promulgated or shall be promulgated by any department, division, agency or bureau of the state government shall be more restrictive of the political activity of state employees on leave or during those hours not required by law or administrative regulation to be conducting the business of the state.

(pp4) A classified service comprises all positions in the state service except elected officers, appointees of the Governor, judges and one confidential assistant to each of these. Also excepted are state legal department employees; state college teachers; employees of the Division of Vocational Education; employees in the legislature; National Guard and its employees; and patient or inmate help.

TEXAS

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A (qq1)	10	23	110A, 6252-9f	
B	2, 3 (qq2), 10, 11	21, 22, 23, 25 (qq3)		1-161.16
G (Human Resources Dept.)	2, 6B, 10(qq5)	23, 25(qq5)	2-B-21.009	
G (Surplus Property Agency)	2, 10	21, 22		1-145.16

Footnotes:

(qq1) Texas - Does not apply to a person employed by the Texas Department of Public Safety.

(qq2) In violation of any statutory provision.

(qq3) All employees retain the right to express their opinions on all political subjects and candidates and take an active part in the political management and political campaigns, subject to limitations in this section.

(qq4) Leave without pay is to be provided for attending meetings etc., the purpose of which is to secure more efficient depts. and better working conditions. Nor shall any rule ever be adopted affecting the constitutional right to appear before or petition the general assembly.

(qq5) Vocational rehabilitation and human resources department personnel may vote and express opinions as citizens on any subject. 1981 amendment to human resources code changed language to make employees "subject to all applicable federal restrictions on political activities."

UTAH

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
B (rr1)	3(rr2), 10 (rr3), 11	21, 22, 25(rr2)	UCA 67-19-19 (H.B. No. 34, 1982)	
B	3(rr2), 7 (rr4), 10, 11	21, 22, 23, 25 (rr5)		A 11-44.1:2b, c, d A 11-44.1:3d
G (State Highway Patrol and Public Safety Employees)	2, 5, 6A, 7, 10	21, 22, 23		A 11-44-2

Footnotes:

(rr1) Utah - Exemptions to the merit system include certain boards, commissions, councils, and committees, elected state officers, appointees, higher education institutions, the legislature, the Supreme Court, the Governor's office, and others so designated in the Utah administrative rules.

(rr2) Regulations governing political party activities permit a classified employee to make voluntary contributions. No career service employee shall be a candidate for any partisan or full-time nonpartisan political office unless he is granted a leave of absence without pay. Such leave of absence shall not entail loss of existing seniority or tenure, but will not be counted for seniority.

Utah footnotes continued:

(rr3) No member of the state highway patrol may use his official authority or influence for the purpose of interfering with an election or affecting the results thereof.

(rr4) Any officer or employee covered by the merit system while in pay status may be an officer in a party organization at a county or inferior level or a delegate at a state or national level, but he may not be a state or federal officer in any political organization.

(rr5) "All officers and employees shall be protected from political exploitation or abuse while allowing individual officers and employees the broadest amount of personal political participation consistent with loyal service to their superiors."

VERMONT

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References

According to the Secretary of State's office, Vermont has no statute on this subject. Regulations are similar to Hatch Act requirements; they are not codified, and we do not as yet have copies. Municipal charters also may affect political behavior of public employees in large cities and towns.

VIRGINIA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References

According to the Attorney General's office and the Registrar of Regulations Office, Virginia Code Commission, there are no laws or regulations governing political activities of state employees in the Commonwealth of Virginia. However, the 1987 Virginia Employee Handbook (VII) states that agency management is responsible for determining the extent to which an employee may openly engage in political activity. An employee cannot campaign for himself or anyone else during the hours he is employed to work for the state. Agency management will determine whether or not any political activity may be appropriate, and whether or not it would constitute a conflict of interest. Employees are encouraged to discuss activity with their supervisor or personnel officer before they become actively involved in any political activity.

WASHINGTON

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	6A (uu2), 11	23, 25 (uu1)	41.06.250	A.G. 1979 No 3
B	3 (uu3), 6A (uu2), 11	23, 25 (uu1)	41.06.250	356-46 WAC

Footnotes:

(uu1) All state and local government employees are granted the right to vote, express political opinions, hold political party offices and manage a political campaign, and participate in issues and for nonpartisan offices.

(uu2) Solicitation for payment to any partisan, political organization or for any partisan political purpose of any compulsory assessment or involuntary contribution is prohibited; however, officers of employee organizations may solicit dues or contributions from association members. No soliciting of contributions for partisan political purposes is allowed on property of the state or its political subdivisions. State college and university facilities may be used for political meetings.

(uu3) A classified civil service employee may not hold a part-time public office in a state political subdivision when such holding would be incompatible with or interfere with official state employment duties.

WEST VIRGINIA

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	11 (vv1)	23, 25 (vv1)	3-8-12	
A	6A (vv1)		11-36	
B	3, 4, 5, 6, 7, 10	21, 22, 23, 25 (vv2)	29-6-20	Civ. Service Rules Sec. 18
E (County Deputy Sheriffs)		21	7-14-14	
	2		7-14-15	
G (Alcohol Beverage Control Commission)	2, 3			Rules of W. Va Alcohol Beverage Control Comm.
G (State Road Commission)	3, (vv3)		17-2-6	

Footnotes:

(vv1) West Virginia - No officer or employee of the state or any political subdivision shall allow entrance for the purpose of giving or receiving political solicitations. Such employees may make contributions or engage in political activities voluntarily.

(vv2) Political participation is permitted pertaining to constitutional amendments, referendums, municipal ordinances, nonpartisan activities or issues, and other similar activities.

(vv3) A member of the Commission shall not be a member of any political committee while serving as a member of the commission.

WISCONSIN

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	11 (ww1)	21, 22, 23, 25 (ww1)	Sec. 11-36,	
B	3 (ww3) 11 (ww2)	23	Sec. 230.40	

Footnotes:

(ww1) Wisconsin - No soliciting or receiving any contributions or service during duty hours or in an office or property of the state or any political subdivision, except that an elected state official may solicit and receive services not constituting a contribution from a state employee with respect to a referendum only.

(ww2) No person in the classified civil service may engage in any political activity during work hours, nor engage in political activities when not on duty to such an extent that his efficiency is impaired during work hours or to cause tardiness or absenteeism from work.

(ww3) A classified service employee may be granted leave of absence to run for partisan political office or participate in partisan political campaigning. If elected to office, he shall be separated from the classified service with reinstatement privileges for three years following termination or for one year following termination from the elective position, whichever is longer.

WYOMING

Class of Employee	Restrictions On State, Local and National	Protections and Permitted Activities	Legal Code References	Regulatory Code References
A	3 (xx1), 10, 11	21, 22, 23, 24, 25 (xx1)		Governor's letter to state employees 9/4/80 State Personnel Rules, Sec. 12
E, F	6A	23	15-5-117	
G (Employment Security Commission)	3, 7, (xx3)		27-3-113	

Footnotes:

(xx1) Wyoming - State employees on their own time may express political opinions; wear or display badges or stickers; belong to, be active in, and hold office in a political party; circulate or sign petitions, make contributions, and actively work for a party or candidate; and participate in a variety of activities at the polls. A state employee may become a candidate for public office in a nonpartisan election but not in a partisan primary or general election.

(xx3) No officer or committee member of any political organization may be appointed or employed by the Employment Security Commission.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
Affiliated with AFL-CIO
80 F Street, N.W., Washington, D.C. 20001

STATEMENT BY

KENNETH T. BLAYLOCK
NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
(AFL-CIO)

BEFORE THE

SUBCOMMITTEE ON
FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON

H.R.3400
HATCH ACT REFORM

FEBRUARY 24, 1988

My name is Kenneth T. Blaylock. I am the National President of the American Federation of Government Employees (AFL-CIO), which represents over 700,000 active and retired government workers across the country. I am also appearing here today in my capacity as the President of the Public Employee Department of the AFL-CIO.

We are here today to urge in the strongest possible terms passage of a Senate bill crafted along the lines of the House-passed H.R.3400. Enactment of such legislation would at long last free government employees to engage in partisan campaign work when off duty while strengthening protections against the political abuse or coercion of the work force.

There are many difficult issues facing Congress. Hatch Act reform is not one of them.

Hatch Act reform is not a partisan issue. The federal workforce's political make-up generally reflects the community in which it resides. It is not a monolithic voting or activist block. This fact is reflected by the broad bipartisan support for H.R.3400. H.R.3400 was unanimously supported by both majority and minority members of the House Post Office and Civil Service Committee, and it passed the entire House by the overwhelming margin of 305 to 112.

State experience has shown that the dire predictions of the Hatch Act opponents are false. Providing government employees with full political freedoms in state governments has been broadly achieved without politicizing the state workforces. Forty-one states have more liberal political restrictions than the federal government (see attached). No widespread abuse has been reported. In short, liberalized "Hatch Acts" at the state level are working.

The Hatch Act is outdated. The government workforce today operates in a much changed environment than in 1939 when the Hatch Act was passed.

- The public and the employees are much more attuned to and offended by attempts to politicize the workforce.
- The press as an institution is vigilant in ferreting out political malfeasance within government.
- Congressional committees (often with the assistance of the GAO) exercise their oversight responsibilities to continually guard against agency politicization.
- Unlike 1939, unions in the federal sector now represent the vast majority of employees and have statutorily defined powers and responsibilities to protect and defend employees from managerial abuse and coercion.
- The Merit Systems Protection Board exists to defend employees against personnel actions which contravene merit principles.

In this changed environment, the Hatch Act no longer protects employees--it silences them.

Hatch Act reform would continue the proud American tradition of expanding political rights and freedoms. The 2.9 million Americans who work for the federal government are the last large group of U.S. citizens who are legally excluded from participating in the political life of this country.

The history of our country has been a history of expanding political freedoms. From a rather narrow coterie of white male property owners, political rights and freedoms were extended to an ever increasing range of the American population. Through the Nineteenth Amendment, the franchise was extended to all white women. The Civil War and the Voting Rights Act brought black Americans into full American citizenship.

History tells us that each of these expansions of liberty were fraught with controversy at the time. But history also shows that, ultimately, these acts have strengthened the fabric which binds us together as a country. It was not only blacks and women who were "harmed" by their disfranchisement--the whole country suffered. In this age, who can conceive of how shallow our democracy and political debate would be without the voices of Jesse Jackson, Jeanne Kirkpatrick, Andrew Young, and Geraldine Ferraro?

The entire public discourse is weakened by the exclusion of federal workers. Federal employees, because of their working knowledge of government programs, have a unique contribution to make to improving the quality of America's political debate. In the context of a political campaign, who can better address the problems of food poisoning than the Federal Meat and Poultry Inspectors who work on the food processing lines? Who can better address Veterans' health care than the doctors in the VA Hospitals? Who can better address the quality of service from Social Security than those employees who answer the Social Security phones?

Freeing these employees to contribute fully to our country's political debate will benefit the entire population.

The Hatch Act infringes on Constitutional freedoms. We would like to offer a series of questions which we urge the Committee to submit to the Special Counsel of the Merit Systems Protection Board. I do not know the answers to these basic questions, and I suspect the Office of Special Counsel, who is charged with enforcing the Hatch Act, will have difficulty in answering these questions.

Nevertheless, these are the types of questions we get every week from our membership. Clearly, the confusion created from these types of questions causes many to refrain entirely from political activity. These questions and their answers, we think, can serve to highlight the extent to which the Hatch Act infringes on freedom of speech, freedom of religion, freedom of the press, and freedom of association.

- If a federal employee is asked his or her opinion of a candidate by a reporter, can an employee answer? If the quote is used in a newspaper and subsequently used in campaign literature without permission, is it a violation?
- If federal employees in a church setting endorse or oppose a candidate on the basis of their religious view on abortion, is this a violation? If they state their view on abortion and state the candidate's agreement or disagreement with that view, but without formally endorsing the candidate, do they violate the law?

- Can a federal employee write a letter to the editor expressing his or her views on a candidate? Can he or she write two, three, or four letters expressing these same views?
- Can a local federal employee newsletter report the endorsements of other organizations (i.e., the AFL-CIO)?
- Can a federal employee appear at a candidate's forum and ask critical, negative questions clearly designed to embarrass a candidate? Could the employee appear at a series of such forums?
- Can a federal employee bake a cake for a partisan political meeting? Can that same employee drive to the store to buy the materials for the cake if his or her spouse bakes the cake?
- Can an employee with a partisan bumper sticker on his or her car give another bumper sticker to someone who asks for it?
- Can an employee xerox a derogatory news article about a candidate and give it to a neighbor? Can the employee xerox ten copies and hand them out? Can the employee mail the article to an opposing candidate?
- Can a federal employee fraternize with friends who are campaign workers? If the discussion turns to campaign strategy, must the employee leave? Can the employee offer advice?

The gray areas highlighted by these questions can also chill the political activities of a federal employee family.

For example, clearly a federal employee could not personally conduct partisan political meetings in his or her house, nor could he or she drive partisan campaign workers to campaign activities. Could the employee's spouse hold such a meeting in their house? Could he or she drive the spouse or family members to campaign activities? Could a federal employee appear at partisan political events with his or her spouse if the spouse was running for political office?

It is interesting to note that the history of Hatch Act prosecutions include those against a VA nursing assistant advocating that her father be elected sheriff, a postal employee who circulated a nominating petition for her father's candidacy for county treasurer, and a postmaster who publically endorsed his son for county attorney.

THE ARGUMENTS AGAINST HATCH ACT REFORM

The remainder of my testimony will seek to address the arguments against the legislation offered by Common Cause. We have worked with Common Cause on a series of issues in the past, but on this issue, they are woefully misguided. On December 10, 1987, Common Cause sent a letter [see Appendix I] urging the defeat of Hatch Act Reform. Their arguments, which are similar to those offered by other well-meaning opponents, are superficial, irrelevent, or wrong.

ARGUMENT 1:

> "An incumbent President seeks to enlist a large army of government workers in the President's campaign for re-election. What are the protections against the implicit pressures to participate? What kind of unfair advantages does this provide the incumbent?"

Let's examine this scenario: The President calls in his Cabinet and asks them to enlist the 2.6 million civilian employees in his campaign--in secret.

It would have to be in secret because such action would be against the law. (See section 7323 of H.R. 3400.) Given the heroic assumption that the Cabinet agrees and the story is not leaked, the Cabinet officials then return to their agency and ask the 1,600 political appointees to enlist the other 7,600 federal executives in this secret effort and so on down the chain of command until all 2.6 million employees have been enlisted in the reelection campaign, remembering that all this has to be done without Congress, the press, or federal employee unions getting wind of this illegal activity. Now, if anyone over at Common Cause actually beleives this scenario, I would say that Common Cause lacks common sense.

Now, let's take the second question they pose based on "implicit pressure". Here again we run into a real problem. If there is an organized effort to generate "implicit pressure", it would, once again, have to be secret, and keeping it secret would be impossible. (How long could such a campaign be run before it appeared on the front pages of the New York Times and the Washington Post, and became a feature story on "Sixty Minutes"? How many phone calls to Congressional offices would need to be made before you would begin an investigation, haul Administration officials up here, put them in the hot seat and turn up the heat?)

Does anyone seriously believe that such an organized effort could be conducted which would not harm the candidate's campaign?

So any organized campaign to support an incumbent is doomed to fail, but to give Common Cause's argument its full trial, let's now turn to the case where a supervisor acting on his or her own lets it be known that he or she expects employees to volunteer for a candidate's campaign. What avenues do employees have to resist?

First, they can contact the press.

Second they can bring their case before the MSPB for any subsequent personnel action.

Third, they can get their union to intervene.

Fourth, they can contact the agency's Inspector General.

Fifth, they can contact the Special Counsel's office and report the violation.

With all these avenues of redress, is the "implicit pressure" likely to work? The answer is clearly "no".

"Implicit pressure" is not a very strong premise upon which to deny millions of people their fundamental political rights. The words "Implicit pressure" in this context borders on being an oxymoron. Pressure to effectively coerce actions must be seen and felt, at which point it is not implicit.

ARGUMENT 2:

> "In a Presidential primary, officials of one government agency (for example, the State Department) support one nominee and officials of another agency (for example, the Defense Department) support a different nominee. What will prevent this from having an adverse affect on the implementation of government policy?"

This example as an argument against Hatch Act reform is a total non-sequitor. This hypothetical dilemna could exist whether or not such officials are active in a campaign, that is whether or not such officials are hatched or unhatched. The current Hatch Act does nothing to prevent employees of one agency from politically supporting one candidate and the employees of another from supporting someone else. It only halts partisan campaign activity.

Furthermore, this example is based upon a hypothetical situation which would never occur. It is impossible to concieve that all officials of any one agency would be unanimously behind any one candidate, and it is even more unlikely that such officials could or would allow their political beliefs to interfere with their agency's mission.

This example ignores the fact that agencies are comprised of people--people with all different backgrounds, beliefs, and levels of political interests and involvements. It is close to impossible that all of the employees of one agency would be able to mobilize around any one issue, let alone any one candidate.

And it is even more difficult to perceive how they could effectively alter the implementation of a policy to advantage one candidate.

And once again, what does any of this have to do with participating off-duty on a political campaign?

ARGUMENT 3:

> "A supporter of an unsuccessful candidate seeks, but is not awarded, a government contract. The decision is made by a government department whose

> officials have participated in the campaign of the winner. How can the appearance of retribution or favoritism be avoided?"

First, as Common Cause perhaps realizes, there are numerous statutes and regulations which govern the awarding of government contracts. These governing regulations include the Competition in Contracting Act, the Federal Acquisition Regulations, and individual agency procurement directives. These mandatory and overlapping processes are often criticized, but they provide more than sufficient checks and balances to preclude any pattern of retribution or favoritism. In addition, these regulated contracting processes provide substantial public information to insure competition and challenge by interested parties. Contracts are seldom awarded by individuals, but are subject to administrative review and approval at higher organization levels. Furthermore, there is an administrative appeal review for losers, as well as a contract protest procedure to the General Accounting Office. In sum, if a contract was awarded or denied due to political bias, there are regulatory, administrative, and legal avenues of recourse.

Once again, it is important to note that this scenario is independent of the government employees' active participation in the political process. Hypothetically, if the government employee has strongly-held political beliefs and decides to try to break the law in awarding contracts to reflect those beliefs, such action could take place today under the current Hatch Act. Attempting to award or deny a contract based upon political considerations does not turn on merely whether an individual was active in a campaign.

But let's address the heart of the question. Would political participation by employees create the appearance of a conflict of interest in awarding contracts?

First, the largest potential for abuse in contracting is in the realm of sole source, non-competitive contracts. Affecting and implementing such awards largely lays outside of the career workforce. One is tempted to say that with the Secord fiasco in Irangate, Wedtech, and the Iraq pipeline, thank God we have the Hatch Act to protect us from the appearance of politicized contracting.

Second, the history of contract abuse shows that such abuse primarily occurs for pecuniary, not political reasons.

Third, Common Cause seems to think there is a distinction between contributing monetarily to a campaign and actively participating in a campaign in involking the appearance of favoritism. I submit that there is no real distinction between actively participating off-duty, which is currently illegal, and making a political contribution, which is currently allowed under the law. I challenge Common Cause to find one contractor who thinks they have lost a federal contract because a career employee has contributed to a candidate the contractor opposed.

ARGUMENT 4:

> The Common Cause also generally sites the "undesirable politicization" and threat to "impartial administration".

First, this concern relates only to a relatively small number of federal employees who are involved in policy-type work. It is difficult to see how it could apply to the claims adjustor at Social Security, the medical technician in a Veterans' Admnistration (VA) hospital, or the janitor in a GSA building. For example, the VA x-ray technician spends eight hours a day developing x-rays and consulting with doctors. After work, he goes door-to-door for a candidate. The next day, he returns to work. The VA has not been politicized, policy has not been altered, the health care at the hospital has not been affected. Yet, the defenders of the Hatch Act would imply that this would be the case.

Actually, defenders of the Hatch Act maintain that all jobs, including janitors, x-ray technicians, and other non-policy positions, are so important that the employees holding these jobs must be stripped of their political rights. But the Administration claims to have contracted-out some 30,000 of these jobs and plans to contract out some 84,000 additional jobs. It is baffling to the thousands of workers so affected that one day their job was so important and special that they had to be denied their political rights to participate in partisan politics, but on the next day the same job could be turned over to employees who had none of these political restrictions.

So even if the concern about Hatch Act reform compromising a professional, depoliticized workforce was valid, it would only apply to a small number of government positions. But even for this small group, this concern is not valid.

This reservation is usually expressed in general terms as an unspecified fear that political participation would somehow either alter or taint these employees' work. But federal employees, like most employees, seek to do good work and seek to better themselves through promotions, etc. This requires them to do their best at work, regardless of any disagreements they have with the Administration in power. This fact has been bourne out by Reagan political appointees who were initially very suspicious of career federal employees, but, as time went on, came to praise their dedication. The participation of federal employees in partisan campaigns would not change these workplace dynamics.

Second, what is totally and absolutely neglected by Common Cause is that, in a fundamental sense, the federal workforce, federal jobs, and federal compensation are already politicized. There has rarely been a Presidential campaign in the last two decades which has not made an issue of the federal workforce. Back in 1972, it was George Wallace, rallying his supporters with caricatures of federal employees as pointy-headed intellectuals who can't park their bikes straight; in 1976, it was outsider Jimmy Carter, running against the bloated bureaucracy; in 1980, it was Ronald Reagan, promising to get government off the backs of the people; and already in 1988, we've seen one Presidential candidate attempt to raise money by attacking the size of federal pensions. The attack by political figures of both political parties on the Civil Service workforce has been continuous and embittering.

In the face of this negative political onslaught, Common Cause argues that federal employees must be denied the political liberties they need to defend themselves.

Of course, Common Cause is not the only opponent to Hatch Act reform; the Administration, in the person of OPM Director Constance Horner, also has weighed in against the legislation. On November 15, 1987, she addressed the issue in the Washington Post to which I responded on November 16, 1987. We include in Appendix II and III the original letter and our response.

It is interesting to note that almost none of the opponents of this legislation seek to defend the current interpretations of the Hatch Act. Common Cause, for example, "recognizes that the current regulations governing administration of the Hatch Act are complicated. There may well be ways to clarify and simplify [the law]." And Frank Wolf (R-VA), who led the opposition in the House, said on the House Floor, "I recognize that the Act may not be perfect and some modifications could be made."

What these opponents of this legislation refuse to recognize is that the confusion, imperfections, etc., which they seek to modify are intrinsic to any law which attempts to define when free speech becomes proscribed speech, when free exercise of of one's religious beliefs becomes unlawful political action, when freedom of the press becomes illegal political expression, and when freedom of association becomes concerted partisan activity. Any such law will inveitably be rife with contradiction and confusion which gives rise to the perversions testified to today.

It is important to recognize the sweep of the Hatch Act restrictions. The Hatch Act denies political participation to over 2.9 million U.S. citizens. This number of citizens is larger than the voting age population in each of the following states: Iowa, New Hampshire, Vermont, Rhode Island, Connecticut, North Dakota, South Dakota, Nebraska, Kansas, Delaware, West Virginia, South Carolina, Mississippi, Arkansas, Oklahoma, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Maine, Utah, Nevada, Oregon, Alaska, and Hawaii. It is larger than the number of voting age legal immigrants living in the U.S. from any one country, including Mexico. If any other group of this size, whether it be racial, ethnic, or religious, were similarly excluded from political participation, I can't believe that there would not be a public and international outcry.

The Hatch Act leads to an aberration in our free country. Free American citizens are afraid to write letters to the editor; they cannot endorse family members running for office; they are fearful in associating with friends tied to campaigns; they must think twice about paticipating in religious, community or union publications if such publications are to publish political materials.

Of course, there are federal employees who participate in political campaigns. I suspect they number in the thousands. These employees, in full recognition of the fact they are jeopardizing their jobs, feel so strongly about a candidate or the candidate's issue that they toil away anonymously on phone banks or in back rooms of campaign offices while nervously looking over their shoulders. They are the federal employee counterpart of Poland's Solidarity engaging in surreptitious and illegal political activity, attempting to avoid the government's investigators.

Hatch Act reform is not a union issue. Hatch Act reform is not a Democratic or Republican issue. It is an issue of political freedom and individual liberty, and I urge the support of H.R. 3400 by all those committed to freedom and liberty.

ATTACHMENT I

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036 (202) 833-1200

Archibald Cox
Chairman

Fred Wertheimer
President

John W. Gardner
Founding Chairman

December 10, 1987

Dear Senator:

In January, hearings are expected to begin in the Senate on legislation to repeal the current Hatch Act restrictions against partisan political activity by federal workers. Common Cause believes efforts to abandon the fundamental concept of an unpoliticized civil service are dangerous and unwise, and strongly urges you to oppose them.

Last month, the House of Representatives passed a bill opposed by Common Cause which would, for the first time in almost 50 years, allow federal workers to engage actively in partisan political activity during off-hours. Civil service employees would be permitted to run as candidates in partisan elections, serve as officers of a political party, raise partisan campaign contributions, and administer political action committees. Senator Pryor (D-AR), Chairman of the Subcommittee on Federal Services, Post Office, and Civil Service of the Senate Governmental Affairs Committee, has indicated he intends to hold hearings on proposed revisions of the Hatch Act early next year.

The Hatch Act was originally enacted in response to a federal bureaucracy which operated on the "spoils system," rewarding political affiliation over merit performance. Repeal of the Hatch Act's basic protections would increase the potential for building a powerful political operation based on the use of government workers and erase the narrow line between lawful administrative discretion and political favoritism.

It takes little effort to imagine situations where the effect of a repeal of the partisan activity restrictions would be detrimental to the government's operation and would undermine public confidence in the decision-making process:

o An incumbent President seeks to enlist a large army of government workers in the President's campaign for re-election. What are the protections against the implicit pressures to participate? What kind of unfair advantages does this provide the incumbent?

o In a Presidential primary, officials of one government agency (for example, the State Department) support one nominee and officials of another agency (for example, the Defense Department) support a different nominee. What will prevent this from having an adverse affect on the implementation of government policy?

o A supporter of an unsuccessful candidate seeks, but is not awarded, a government contract. The decision is made by a government department whose officials have participated in the campaign of the winner. How can the appearance of retribution or favoritism be avoided?

Clearly, stripping the restrictions on partisan political activity by federal workers creates the potential for widespread abuse and opens the door to implicit coercion against which there is no real protection.

It is important to recognize that under the current Hatch Act, federal workers are already permitted to engage in various political activities. For example, they may make political contributions to candidates, serve as rank and file members of political parties, and engage in non-partisan political activities such as running for election to a non-partisan local school board. It is only the most active levels of partisan political activities from which they are currently barred. In drawing the line, we believe that the Hatch Act strikes an appropriate balance between the federal worker's ability to participate in political activities and the public's right to fair and impartial administration of government.

Common Cause recognizes that the current regulations governing administration of the Hatch Act are complicated. There may well be ways to clarify and simplify for workers the degree of participation they are permitted. Nevertheless, as a core principle, a careful balance must be struck between an individual's First Amendment right of free speech and association, and the public's right to impartial administration of government. Removing the Hatch Act's basic restrictions would destroy this balance and lead to undesirable politicization of the federal bureaucracy.

The U.S. Supreme Court in United States Civil Service Commission v. the National Association of Letter Carriers upheld the constitutionality of the Hatch Act and wrote that "it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service." We agree. The impartial administration of the law, and its appearance, will be severely undermined if the kind of changes in the Hatch Act contained in the House-passed bill are enacted. With the basic restrictions on partisan political activity repealed, no procedural or other safeguards will be sufficient to protect against subtle forms of political favoritism or implicit coercion of federal workers.

Common Cause urges you to reject efforts to make fundamental and dangerous changes in the nature of partisan political activities that can be undertaken by employees of the federal government. We urge you to oppose the repeal of the Hatch Act's basic protections.

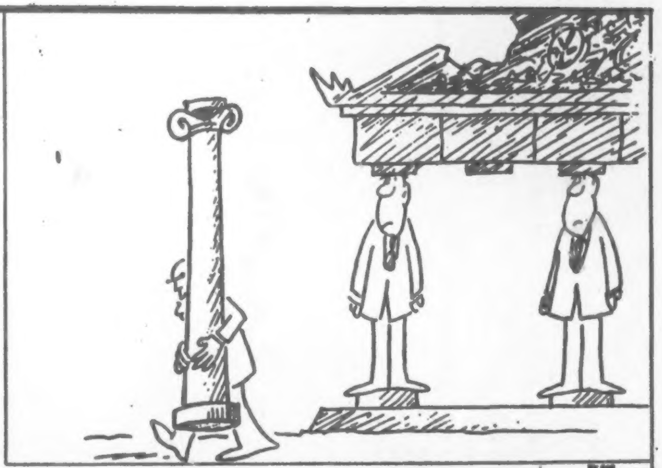
Sincerely,

Fred Wertheimer
President

Constance Horner

Leave the Hatch Act Alone

It has worked well for decades.



Today's debate over political activity in the civil service has not changed much since the turn of the century. In 1892, Theodore Roosevelt was civil service commissioner, and civil service participation in partisan politics had been forbidden for a decade. The commissioner, nonetheless, encountered what his biographer described as "enough evidence of wanton illegality by Federal employees to fill a fleet of police wagons." Though TR's own party was the beneficiary, he still urged that the government worker "must be taught in one way or another that his duty is to do the work of the government for the whole people, and not to pervert his office for the use of any party or faction."

About a dozen years later, another New Yorker, who was not destined for the presidency, cursed the civil service reforms. George Washington Plunkitt was boss of Tammany Hall and, though a fervent partisan, sought common cause with the other side of the aisle. "All leaders of the two parties should get together and make an open, nonpartisan fight against the civil service, their common enemy. The time is fast coming when civil service or the politicians will have to go," he said.

Three generations have since passed, and both groups are still with us. But Plunkitt's plea for the politicians to unite against what was then known as "good government" has taken on a new form. This time, the alliance is between the politicians and the public employee unions, with the larger public unrepresented. There is, making its way through Congress, a bipartisan effort to repeal the Hatch Act, the statute passed in 1939 that prohibits partisan politicking by nearly 3 million federal workers and hundreds of thousands of others employed by state and local governments. The repeal of the Hatch Act would alter fundamentally the relationships among citizens, civil servants and the nation's political leadership in ways so important that the proposal deserves more than the cursory examination it has received thus far.

Why are some in Congress trying to do this? In the first place, they are under pressure from people who know the Hatch Act works. Last February, the presidents of three large federal employee unions were suspended for two months from their federal jobs because of illegal endorsements of the 1984 presidential campaign of Vice President Mondale. But they want more than retroactive pardons. They and their associates want to become the dominant power over the $76 billion federal payroll, and acting through politicians whom they think they will neutralize with campaign contributions and political "volunteers," they want to acquire decisive power over what the federal government does and how it goes about doing it. At a time when they protest growing public criticism of the "bureaucrat," they are prepared to forfeit even more public regard by demanding that the federal work force, whatever else it might become, must also be an army of foot soldiers in partisan political campaigns.

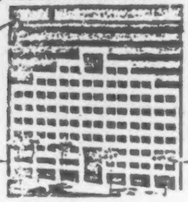
If they succeed, they will have destroyed an important balance in our system. The civil service is one of those things, like the political parties themselves, that are not mentioned in the Constitution, but which nevertheless contribute to stable constitutional government. Our democratic system requires a sense among citizens that once policies are made through the normal political processes, those policies will then be implemented in an impartial way. If it were politicized to the degree sought by the pending "reform," the bureaucracy would turn into something approaching a fourth branch of government in its own right, disdainful both of an executive branch inevitably more circumscribed in dealing with it and of a legislative branch even more unwilling to restrain it.

What is more, relations within the bureaucracy would begin to deteriorate. Federal managers do not welcome the intrusion of purely political criteria and opinions into their work places. Today, an employee's political opinions are not particularly relevant to his peers, his superiors or his subordinates. But the free-for-all of political campaigning and fund raising would add a new opportunity for poisonous divisiveness. Even if "political retaliation" is not often directed one against the other, workers would certainly believe that it is. And no one should believe that standards of integrity, efficiency and productivity would have an easy way in such an environment.

Like so many other "reforms," the proposed repeal of the Hatch Act is proffered as a defense of someone's "rights." But in truth, and as everyone knows, civil servants are protected in the political rights that matter most. The restrictions on other political activities are in fact part of the bargain they make with a public that gives them permanent tenure, generous support, substantial respect and real power. It is not a bad bargain. It has worked well for decades. The sense of partnership and good faith that allows it to continue is more important than the politic~l ambitions of the people who want to undo it.

The writer is director of the Office of Personnel Management.

ATTACHMENT III



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

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AMERICAN FEDERATION of GOVERNMENT EMPLOYEES
JUSTICE FRATERNITY PROGRESS

5/Wash.Post

November 16, 1987

Letters to the Editor
The Washington Post
1150 - 15th Street, N.W.
Washington, DC 20071

ATTENTION: MEG GREENFIELD

Dear Editor:

In the spirit of true demagoguery, Constance Horner, the Director of OPM, has chosen to distort, obfuscate, and blatantly lie about the pending Hatch Act Reform legislation, H.R. 3400, The Federal Employees Political Activities Act. (See, The Washington Post, November 15).

At no point in her diatribe does the Director address the fundamental question of Hatch Act Reform -- "Do we need to strip 2.6 million American citizens of the most basic and fundamental political rights in order to bar the politicized abuse and coercion of the federal workforce?"

The carefully crafted, bipartisan H.R. 3400 answers this question with a resounding "No!" The legislation accomplishes its dual objective of barring political coercion and expanding political liberty by drawing a firm and clear line which bans political activity on the job or at the government worksites while freeing employees to engage in politics in their homes and communities just like other U.S. citizens.

Instead of a reasoned debate around this issue, Ms. Horner uses emotionally-charged phrases such as "Hatch Act Repeal", "army of foot soldiers", "Tammany Hall", and union presidents seeking "retroactive pardons" and "decisive power".

First, as Ms. Horner knows, H.R. 3400 amends -- does not repeal -- the Hatch Act. By clarifying prohibited practices on the worksite (see sections 7323, 7324 and 7325) the legislation would actually strengthen protections against political abuse.

Second, in raising the spectre of "Tammany Hall", Ms. Horner states "Today's debate...has not changed since the turn of the century". But she is wrong; much has changed. The press, the public, and the Congress are now vigilant watchdogs over any attempt to abuse political power. If any Administration systematically sought to abuse the federal workforce for political ends, how long would it take before such abuse was on the front page of The Washington Post, a feature story on CBS's 60 Minutes, and a target of Congressional hearings and investigations. On our part, I guarantee that our union would crucify any supervisor who attempted coercion on behalf of any candidate of any party in any election.

In reality, any supervisor attempting such activity would inevitably harm the campaign he or she was seeking to support. This in itself would guarantee that coercion would not take place.

Ms. Horner's statement that three federal employee union leaders, including myself, want "retroactive pardons" is particularly offensive in that the legislation explicitly grandfathers any preceeding penalties and pending proceedings.

Finally, Ms. Horner raises the red herring of union abuse of political power. Federal employees, like the American public, hold diverse political views and aspirations. Some are Republicans; some are Democrats. Some would like to be engaged in partisan political activities; most would not. Federal unions have no power to intimidate federal workers into taking political action.

Our power in the political arena is the same as thousands of other organizations -- the ability to inform, educate and persuade.

After wading through this sea of disinformation, one is left with the puzzling question of why this Administration, which has proved to be an eloquent spokesman for the benefits of freedom and democracy abroad, would abandon these principles when they apply to the 2.6 million employees of federal government.

Sincerely,

Kenneth T. Blaylock
National President

ATTACHMENT IV

The state statutory provisions which indicate that public employees may engage in most voluntary, off-duty, political activities in relation to a partisan election campaign, are as follows:

1. Alabama. Code of Alabama, § 17-1-7, § 36-26-38.
2. Alaska. Alaska Statutes, § 39.25.160, § 39.25.178. (But employees may not take part in the "management" of a "political party" above the precinct level.)
3. Arkansas. Arkansas Statutes Annotated, § 83-119, § 3-1104.
4. California. California Government Code, Title 2, §§ 3203-3209.
5. Colorado. Colorado Revised Statutes, §§ 1-45-116, 24-50-132, 24-50-133.
6. Connecticut. Connecticut General Statutes, §§ 5-266a - 5-266d.
7. Delaware. Delaware Code, Title 29, § 5951.
8. Florida. Florida Statutes, § 104.31, § 112.046.
9. Hawaii. Hawaii Revised Statutes, §§ 76-91, 76-92.
10. Idaho. Idaho Statutes, § 67-5311. (But employees may not be involved in "political organization management".)
11. Illinois. Illinois Statutes, Title 24½, § 38t. (But see also Title 23, § 12-21.7, as to certain city and town employees who make welfare benefit determinations.)
12. Indiana. Indiana Code, §§ 4-15-10-2, 4-15-2-40, 4-15-2.5-6.
13. Iowa. Iowa Code Annotated, §§ 721.3-721.7, 400.29.
14. Kansas. Kansas Statutes, § 75-2953.
15. Maine. Maine Revised Statutes, Title 5, § 14 and § 679-A.
16. Maryland. Annotated Code of Maryland, Article 33, § 28-1.
17. Massachusetts. Massachusetts General Laws, Title 55, §§ 13-17; Title 56, § 36.
18. Michigan. Michigan Compiled Laws, §§ 15.401 - 407.
19. Minnesota. Minnesota Statutes, § 43A.32, § 210A.081.
20. Montana. Montana Code, § 13-35-226.
21. Nebraska. Statutes of Nebraska, §§ 23-2513, 2532, 2533, 3001, and § 81-1315. (But employees may not hold an office in "any political party.")
22. Nevada. Nevada Administrative Code, § 284.770. (No statutory provision found.)

23. New Hampshire. New Hampshire Statutes, § 98:18.

24. New Jersey. New Jersey Statutes, § 11A:2-23; New Jersey Administrative Code, § 4:1-21.3.

25. New Mexico. New Mexico Statutes, § 10-9-21. (But an employee may not be an "officer" in a "political organization".)

26. New York. New York Civil Service Law, Article 7, § 107; see also Article 2, § 27.

27. North Carolina. General Statutes of North Carolina, Art. 5, § 126-13 to § 126-15.

28. North Dakota. North Dakota Century Code, § 34-11.1-02, § 44-08-19, § 39-01-04.

29. Oregon. Oregon Revised Statutes, § 260.432.

30. Rhode Island. Rhode Island General Laws, §§ 36-4-51 to 36-4-54.

31. South Carolina. No statutory restrictions or provisions were found.

32. South Dakota. Administrative Rules of South Dakota, § 55:01:27:01 to § 55:01:27:05. (No statutory provision found).

33. Tennessee. Tennessee Code Annotated, § 2-19-201 to § 2-19-208.

34. Texas. Texas Civil Statutes, Title 110A, Art. 6252-9f. See also Rules of Texas Merit System of Personnel Administration, §161.16.

35. Utah. Utah Code, § 67-19-19. See also Utah State Division of Personnel Rule A11-44-1:3d.

36. Vermont. No statutory provisions restricting or governing political activities of public employees were found.

37. Virginia. See Commonwealth of Virginia Employee Handbook, § VII.L (1987). (No statutory provision).

38. Washington. Revised Code of Washington, § 41.06.250.

39. West Virginia. West Virginia Code, § 29-6-20. (But employees may not provide services to candidates or parties "for compensation").

40. Wisconsin. Wisconsin Statutes, § 230.40

41. Wyoming. See regulations of the Wyoming Department of Administration and Fiscal Control, Personnel Division, Section 12. (No statutory provision found).

NATIONAL
FEDERATION
OF FEDERAL
EMPLOYEES

NFFE

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Mr. Chairman and Committee Members:

On behalf of the National Federation of Federal Employees, I appreciate the opportunity to appear today before the Committee to present our views on the Hatch Act and the need for its reform. NFFE represents over 150,000 Federal workers in more than 40 Federal agencies, and is thus particularly concerned about the need for improvement in the political activity rights of these employees.

In 1939, Congress approved a bill sponsored by Senator Carl Hatch which prevented Federal workers from running for public or party office at any level and from participating in any partisan political campaigns, either as volunteers or paid employees. The Act was originally intended to correct alleged abuses of the merit system that arose with the growth of the Federal Government and the popularity of President Franklin D. Roosevelt during the New Deal. At a time in history when a staggering number of Americans were unemployed and a hefty number of civil service jobs were filled through patronage, the restrictions contained in the Act made some sense.

I think we can all agree that times have changed since then, however. To begin with, the Federal Government has tripled in size to meet the needs of our country's expanding population. The Hatch Act no longer proscribes the political activities of a fledgling workforce. There are now nearly 3 million Americans who are unable to excercise their political rights because of Hatch Act regulations.

Secondly, Federal employees now qualify for their civil service jobs under the merit system, an effective form of protection in itself. Designed to protect employees from political coercion, the merit system renders the draconian restrictions of the Hatch Act obsolete. Supervisors and subordinates alike are aware of what is expected for each position, and the workforce has by now gained enough sophistication to know when political pressure is being applied.

Instead of offering employees their only protection against political coercion, the Hatch Act of 1939 has left a legacy of misapplication and penalties its framers never intended. The Hatch Act has been interpreted in such a manner that Federal employees are precluded from almost all political activities. The law forbids employees from campaigning for candidates in partisan elections, making campaign speeches, distributing campaign material in partisan elections, and collecting contributions for any partisan candidate. Interpretation has become so restrictive that the very employees the law was intended to protect have been penalized instead.

For example, during the 1984 election campaign, the President of NFFE Local 1765 at the Veterans Administration Hospital in Leavenworth, Kansas was threatened with discipline by management for signing her name to postcards which endorsed a political candidate. What makes this particular situation ironic is that the employee originally was not involved in the campaign, but offered to fill in for her politically active husband who had suddenly become ill. The NFFE member was unaware that she was under any restrictions because she had never been so informed by management.

After a lengthy investigation by the Office of Special Counsel, the complaint against the employee was dismissed. The OSC said the agency had been deficient in providing guidance to the workers on the Hatch Act. In addition, several other employees, including management officials, were found to be participating in similar political activity without being similarly accused. NFFE representatives suspected that the agency could have been using the incident as an excuse for disciplining a worker for union activity.

Another case involves an NFFE member from Atlanta, Georgia who belongs to a folk dancing group. She called NFFE Headquarters to find out if there would be any problem if she appeared as part of the dance troupe when it performed for delegates to the Democratic National Convention. She noted that another union member was hoping to pick up a little extra cash tending bar at one of the convention hotels and that he was also concerned about any possible violation. NFFE staff offered to consult the Office of the Special Counsel, since our experience has shown that even such harmless activities as those mentioned by the NFFE member are often construed as Hatch Act violations. True to form, the OSC determined that the two Federal employees would have to be able to *prove* that one frequently performed in folk dancing exhibitions and the other often tended bar or those activities would not be allowed under the Hatch Act. The OSC was specific in listing as acceptable evidence: progams from previous folk dance exhibitions and pay stubs from bartending at other functions. I find it hard to believe that either of these two individuals would be swaying any of the Democratic delegates by pouring a drink or performing a folk dance. Yet the interpretation by the OSC was clear: only such activities that an employee can prove are habitual can be permitted in such a case.

Other situations brought to NFFE's attention show that the Hatch Act has had quite a chilling effect on the activities of Federal workers. One member in Davenport, Iowa has often expressed an interest in running for city council, but is prohibited from doing so because of the partisan nature of the office. Another member at NFFE Local 738 in Fort Leonard Wood, Missouri, was unable to assist in her husband's campaign for County Collector because of the Hatch Act. The same Local also has a steward who was interested in attending the Presidential caucus in 1984 as a supporter of a particular candidate. The employee heard through the grapevine, however, that management was aware of his activity, and that his presence at the caucus would provide them with the perfect excuse for firing a union official.

If an employee is found to be in violation of the Hatch Act, he or she could be fired. However, if the Merit Systems Protection Board (which adjudicates alleged Hatch Act violations) finds by unanimous vote that the violation does not warrant removal, a penalty of at least 30 days' suspension without pay is imposed. The severity of the punishment and the vagueness of the language describing appropriate activities have been intimidating to the Federal workers who wish to exercise their rights as citizens. Since Hatch Act "law" consists of hundreds of individual decisions, employees view it as a murky management tool, one "they" can use against you if it suits them. Many Federal employees have even refrained from voting in order to ensure that they would not violate the Act.

The problems with the Hatch Act are not newly discovered. In response to opponents of the Hatch Act, Public Law 89-617 was passed in 1966 to establish a bipartisan Commission on Political Activity of Government Personnel. The Commission recommended the restoration of Federal employees' First Amendment rights to political participation, but most of these recommendations have been ignored.

Reform of the Hatch Act has long been a necessity for Federal workers, and now it is close to becoming a reality. On November 17, 1987 the House of Representatives overwhelmingly voted 305 to 112 in favor of HR 3400, the Hatch Act Reform bill introduced by Representative William Clay (D-MO). The legislation reduces the restrictions on political activity while protecting employees from coercion if their political views differ from those of their supervisors.

The House has sent a bipartisan message that the time for Hatch Act reform is now. NFFE would urge that the Senate make an identical statement supporting First Amendment rights for Federal workers by passing HR 3400. This legislation is simple and effective: Federal employees would be able to behave as do all other citizens once they are off the job, off the clock, not wearing a Federal uniform or driving a Federal vehicle.

HR 3400 would permit voluntary, off-duty political activities which do not interfere with the impartial administration of effective public service. At the same time, it would prohibit the use of official authority, influence or coercion with respect to the right to vote, not to vote, or to otherwise engage in political activity. HR 3400 requires that employees who seek elective office do so on their own time. Additionally, employees would be granted accrued annual leave or leave without pay to seek elective office if they so requested. Agency management could deny such leave only based on the exigencies of the public business.

Under no circumstances could money change hands for political purposes at the worksite or on work time. In fact, I'd be willing to bet that many employees would like to see *this* sort of protection when the high school band candy and cookie season rolls around again this year.

Finally, under the bill, the Office of Special Counsel of the Merit Systems Protection Board would continue to issue regulations and prohibitions concerning political activity. Criminal enforcement remains with the Justice Department. The MSPB could impose any penalty for actions brought by the Special Counsel under the general disciplinary action procedures of 5 U.S.C. § 1207.

The First Amendment to the Constitution guarantees to all citizens of the United States the right to political participation. Since 1939, however, Federal workers' rights in this area have been severely restricted. Any reform of the Hatch Act must weigh both the employees' need for freedom of speech and their right to protection against political coercion. We believe HR 3400 clearly provides this balance. We commend the Committee for its attention to this important issue of of voters rights and look forward to working with you to ensure the passage of Hatch Act reform.

That concludes my statement. I will be happy to respond to any questions.

NTEU
The National Treasury Employees Union

TESTIMONY OF

ROBERT M. TOBIAS
NATIONAL PRESIDENT

NATIONAL TREASURY EMPLOYEES UNION

ON

HATCH ACT REFORM

BEFORE

THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

FEBRUARY 24, 1988

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Mr. Chairman, Members of the Committee, thank you for this opportunity to testify in favor of Hatch Act reform. I think the most important thing we can accomplish at this hearing today is to get the facts out about what the Hatch Act does now and what the changes we propose would do. I believe that to a very large extent what opposition there is to Hatch Act reform is a knee-jerk reaction to the syllogism: We should protect our civil service system from political abuses. The Hatch Act is supposed to do that. Therefore, we should not change the Hatch Act. But the conclusion is faulty because although we should protect our civil service system from abuses, the proposed amendments can provide that protection in a much less restrictive way and, therefore, the Hatch Act should be amended.

At first glance, the Hatch Act seems like a good idea. Federal employees should be protected from political coercion. We should keep politics separate from the impartial administration of our laws. I agree with those views. But, I believe that if you are willing to spend just a little time looking at the details of the current state of the law and the changes we propose you will decide, as 305 Members of the House did in November, that H.R. 3400 can accomplish these goals without denying federal employees the same First Amendment rights and the same opportunity to participate in the political process that other American citizens enjoy.

Several questions concerning Hatch Act reform are posed in a letter being circulated on the Hill by Common Cause. I would like to respond to those questions for two reasons: (1), I have great respect for Common Cause and I believe when they speak on Capitol Hill they are listened to; (2), I believe the issues they raise are representative of the kind of general uneasiness about changing the Hatch Act that can be answered to everyone's satisfaction by looking closely at the current law and the proposed changes.

Common Cause states that "The Hatch Act was originally enacted in response to a federal bureaucracy which operated on the 'spoils system', rewarding political affiliation over merit performance." The implicit conclusion one may draw is that there is nothing to prevent the spoils system from returning if federal employees are allowed to participate in politics. But the conclusion is just plain wrong. When the Hatch Act was adopted in 1939, a minority of federal government jobs were filled by examination. Today nearly 80% of government positions require one to pass a standard exam, thus, jobs are filled based on objective criteria and cannot be influenced by subjective "politics". The Merit Systems Protection Board was specifically created in 1977 to protect the civil service from any lapse into the "spoils system" syndrome. The Office of Special Counsel conducts examinations and initiates administrative prosecutions of any violations.

In addition, the criminal code provides vast protection not present in 1939. Title 18, Section 595 prohibits any person employed by the federal government in an administrative capacity from using his official authority for the purpose of interfering with, or affecting, the nomination or election of certain candidates for national office. Violators are subject to a fine of not more than $1,000 or one year in prison, or both.

Title 18, Section 599 prohibits a candidate from the direct or indirect promise or pledge, or the use of his influence, of the appointment of any person for the purpose of procuring support for his candidacy. Violators are subject to a maximum fine of $10,000 and/or two years in prison.

Title 18, Section 600 prohibits promise or special consideration for employment, position, compensation, contract, appointment or other benefit made possible by an Act of Congress to any person in return for any political activity, or the support of a candidate or political party. Violators of this section shall be fined not more than $10,000 or imprisoned not more than one year, or both.

Title 18, Section 601 prohibits causing any person to make a contribution for the benefit of any candidate or political party through the denial or deprivation of any employment, position, or work with an agency of the federal government. Violators face a maximum fine of $10,000 or one year in prison or both.

Title 18, Section 606 prohibits officers or employees of the United States from discharging, promoting, or degrading the rank of any other officer or employee for giving, withholding, or neglecting to make a political contribution. Violators are subject to a fine of $5,000 or three years in prison, or both.

The Common Cause letter uses several hypotheticals to support its point that lifting the "partisan activity restrictions would be detrimental to the government's operation and would undermine public confidence in the decision-making process." The first is: "An incumbent President seeks to enlist a large army of government workers in the President's campaign for re-election. What are the protections against the implicit pressures to participate? What kind of unfair advantages does this provide the incumbent?"

Certainly, if a person feels a compunction to participate in a Presidential re-election campaign because of some notion that it may help his or her job prospects there is little the law can do or should do to prevent that. But, I believe that to assume such a result would occur greatly underestimates the independence of federal workers. In addition, I know of no information that exists that would indicate that federal employees use the political rights they currently enjoy, such as the ability to attend a political rally, or make a campaign contribution, or vote, in a manner that demonstrates more support for the incumbent than any other group.

If, on the other hand, an employee is being pressured to participate by a supervisor or other political appointee, there are, as I have just enumerated, and will continue to be under H.R. 3400, adequate legal protections against any coercion or retribution that may be leveled against a federal employee on the basis of political action or inaction. I do not deny that a situation could develop in which the coercion would be so subtle that the law would be difficult to enforce. But that possibility is so hypothetical and remote that it should not prevent needed changes in the Hatch Act.

The current Hatch Act provisions are not totally effective when there is an isolated case of subtle pressure and the facts are subject to different interpretations. But, the law is effective in preventing a pattern or practice of coercion from developing. If H.R. 3400 is adopted the situation will be exactly the same as it is now. An isolated case may arise in which the law will be difficult to enforce, but any pattern or practice of coercion or retribution will be curbed.

It is very difficult to prove coercion or retribution in a sexual harassment case and while some might have argued in 1940 that women should be protected from such harassment by prohibiting them from performing some jobs, hopefully no one would argue that today. Our view is that we will make the laws against sexual harassment as tough and as enforceable as possible, but we will not limit a woman's right to work where she chooses in order to "protect" her.

We need to strike a similar balance with regard to "protecting" federal employees. The possibility that an isolated case of coercion might go unpunished is not reason enough to deny 3,000,000 people the opportunity to participate to whatever extent they choose in the most basic elements of our democratic process.

Common Cause's second example states: "In a Presidential primary, officials of one government agency (for example, the State Department) support one nominee and officials of another

The third hypothetical posed by Common Cause states: "A supporter of an unsuccessful candidate seeks, but is not awarded, a government contract. The decision is made by a government department whose officials have participated in the campaign of the winner. How can the appearance of retribution or favoritism be avoided?" Again, the top agency officials are not Hatched, so the most visible agency employees are free to and often do participate fully in the political process now. There is also a whole body of law to protect the integrity of the government contracting process. I would suggest that the recent Wedtech case indicates that the law is working. In addition, while the law is vague, one covered by the Hatch Act can currently "express his opinion on political subjects and candidates" (5 USC Section 7324). So a contracting officer's political preference does not currently need to be kept a secret. If H.R. 3400 were passed, however, government contract officers would continue to be prohibited from ruling on contracts for family or friends and any political activity would be prohibited on the job site, so it seems very unlikely that a bidder would ever know a contracting officer's political preference. I do not believe that the remote possibility of the appearance of retribution or favoritism in an area that is so closely regulated is a legitimate reason to deny full political rights to federal workers.

I usually agree with the positions taken by Common Cause and I hope upon further study the organization will come to embrace Hatch Act reform. It seems odd that a group whose agency (for example, the Defense Department) support a different nominee. What will prevent this from having an adverse affect on the implementation of government policy?" I'm afraid I can't resist changing this hypothetical just a little: suppose the sitting Vice President and former head of one government agency (the CIA) is competing in a Presidential primary against the current Senate minority leader whose spouse is the Secretary of Transportation. Okay, maybe that's far-fetched, but indulge me. Even if the bulk of CIA officials supported one candidate and Transportation officials another I don't see that adopting H.R. 3400 would have any impact on the situation.

First, the most visible officials and other policy-makers throughout the federal government are not covered by the Hatch Act now. One cabinet member can endorse a candidate for President while another endorses his opponent. Second, Title 18 Section 595 of the criminal code provides that, "whoever, being a person employed in any administrative position by the United States or by any department or agency thereof .... uses his official authority for the purpose of interfering, or affecting, the nomination or the election of any candidate for the office of President... shall be fined not more than $1,000 or imprisoned not more than one year, or both." Third, those covered by the Hatch Act have always been subject to dismissal for using their "official authority or influence for the purpose of interfering with or affecting the result of an election." (5 USC 7324) They would continue to face dismissal for that offense under Section 7323 of H.R. 3400.

number one priority right now is trying to limit the influence of PAC's and increase the influence of the individual voter would deny 3,000,000 secretaries, janitors, computer programmers, nurses and accountants the right to stuff envelopes, man phonebanks and circulate petitions for their favorite candidate simply because they work for the federal government.

The beauty of the Hatch Act reform embodied in H.R. 3400 is its simplicity. Any political activity away from the job site, on your own time, is allowed. Any political activity on the clock, on the job site, is prohibited. The most insidious aspect of the current Hatch Act is that its vagueness and complexity create a chilling effect. Federal employees often do not participate in permissible activities because they have heard so many conflicting opinions on what is and isn't allowed. We cannot even satisfactorily advise our members. Advisory opinions of the Special Counsel are not subject to judicial review. An employee must put his job in jeopardy in order to receive a final court decision on whether a particular action is permissible or impermissible under the Hatch Act.

As you probably know, when the Congress adopted the Hatch Act in 1939 it incorporated by reference 3,000 separate rulings by the Civil Service Commission. Taken together with the criminal laws that deal with political activity, federal employees are faced with a morass that is so formidable that many decide to play it safe and don't participate, rather than trying to figure out where the line is. When it can be found, the line is often in a curious place. Let me give you an example that could have a direct impact on you.

18 U.S.C. 602 currently makes it unlawful for a Member of Congress or candidate for that office or other employee of the U.S. government to knowingly solicit a campaign contribution from any other such officer, or employee. It is not unlawful for a federal employee to give a campaign contribution to a Congressional candidate, nor is it illegal for the candidate to receive it. It is only illegal for the candidate to ask for it. The penalty is up to $5,000 and/or imprisonment for not more than three years.

NTEU has a political action committee and the FEC requires us to maintain employment information on our donors. I believe similar requirements apply to candidates for Congress. It is easy to see how a contribution from a federal employee could come into a Congressional campaign office and be recorded onto a list that is used for further solicitations. While the candidate would have no actual knowledge that he or she was soliciting a federal employee, the campaign would probably have the employment information because of the FEC requirements. Should such action constitute a crime? If it is okay to give and it's okay to receive isn't it hypocritical to say it's not okay to ask? H.R. 3400 would amend 18 U.S.C. 602 to prevent only solicitations that are in any way coercive or solicitations by a superior as well as contributions from a subordinate. In addition, H.R. 3400 removes the $5,000 cap on the applicable fine allowing any appropriate fine alone or in conjunction with the three year prison term.

NTEU believes very strongly that the federal workers we represent should not be subject to political coercion. Believe me, NTEU would not hesitate to use any of its resources to see that anyone who would try to coerce our members be removed from his or her position and prosecuted to the full extent of the law.

We also believe, however, that the paternalism of the current Hatch Act laws is unnecessary and totally out of step with the laws, customs and beliefs of this post-Watergate world. Certainly, if our young children can be asked to have enough backbone to "just say no" to dangerous street thugs trying to sell them drugs, federal employees, in return for the opportunity to freely exercise their political rights, can be expected to "just say no" if an improper request is made.

When the Hatch Act was adopted there was no such thing as the Federal Election Commission. Today, as I'm sure you are all well aware, every aspect of federal campaigns is subject to disclosure and regulation. There was no Merit Systems Protection Board in 1939 and few federal workers had union representation. In 1939 the news media helped Franklin Roosevelt keep the polio that crippled him secret from the public. Today, we have all seen color drawings of President Reagan's prostate operation. There was no television in 1939.

There was no Common Cause in 1939. Congress itself didn't have the staff to look into a constituent's complaint about an unfair contract award or political pressure at some agency.

The Hatch Act may have been a good idea in its time, but it is not 1939 anymore. The provisions of H.R. 3400 make much more sense in today's world: No political activity on the job site; any political activity offsite and increased penalties for coercion. I urge you to support reform of the Hatch Act.

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STATEMENT BY

THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

REGARDING

HATCH ACT REFORM

HR 3400

February 24, 1988

The National Association of Government Employees (NAGE) is an affiliate of the Service Employees International Union, the fourth largest union in the AFL-CIO. NAGE represents Federal employees all across the country and, on their behalf, we welcome this opportunity to present our views on HR 3400, a measure intended to realize long overdue reform of the so-called "Hatch Act".

NAGE is pleased to appear today and present our strong public support for Hatch Act reform. At the outset, we would like to note our appreciation of the efforts of the Chair in focusing attention on the need to reform a pernicious system that effectively denies millions of Americans their constitutional rights to fully participate in our national political process.

The legislation that bears the name of former Senator Carl Hatch was originally enacted at a time when the nature of the federal service was significantly different from today. At the time there was a firm belief in Congress that certain programs created under President Franklin D. Roosevelt's New Deal were being abused. Specifically, there was widespread impression on Capitol Hill that the environment surrounding federal employment was becoming increasingly corrupt. Proponents of restrictions on the rights of federal employees to participate in partisan political activities claimed that individual employees were being forced to support political candidates and causes against their will. At the same time, some in Congress were concerned with President Roosevelt's immense popularity amongst the Depression-Era electorate and feared that kickback schemes were being, or had been, used to help finance political campaigns.

Congress's response to these twin concerns was to enact the legislation that has come to be known as the Hatch Act. With a minimum of study and debate Congress enacted laws which prevented federal employees from engaging in partisan political activities. At the time of its enactment many observers believed that the Hatch Act was a blessing for the federal employee. It was widely accepted that the legislation freed the individual employee from any fear of coercion or intimidation by government officials, and provided enhanced job security.

The goal to protect employees from such abuse or intimidation by their supervisors was, and remains appropriate and welcome. However, the protections accorded by the Hatch Act do not justify the pernicious violation of First Amendment rights arising from the overly broad and vague language of the statute. The vagueness of the statute has openned the door to a multitude of complicated, vague and misleading regulations, for example:

- An employee can place a political sign on the family car no larger than 15 inches by 30 inches, but a lawn sign may be no larger than 14 by 22 inches.

- A federal employee may write a letter-to-the-editor expressing an opinion on a partisan issue. But that employee may not seek to have copies of that letter sent to five or more newspapers, or write five or more such letters consecutively to one newspaper.

- A Cabinet Secretary may actively campaign for a candidate. But his or her personal secretary cannot even address envelopes for a candidate on his or her own time.

- Federal and postal employees can participate as spectators in political rallies or meetings, but they cannot carry banners or placards.

- A federal employee may wear a campaign button for a favorite candidate on the job, but may not host a meet-the-candidate forum at home after work.

Employees found violating the Hatch Act are suspended for a minimum of 30 days and can be fired. The severity of the punishment and the vagueness of the language describing appropriate activities have been intimidating to the federal workers who wish to exercise their First Amendment rights. Workers frequently decide to not participate in any political activities rather than risk punishment for wrongly interpreting these confusing regulations.

It has been almost 50 years since passage of the original Hatch Act and many of the relevant circumstances have changed. The size of the federal employee workforce has increased threefold since 1939 and now the vast majority of the employees are covered by a merit based employment system that effectively insulates employees from the types of abuse and coercion which earlier generations may have experienced.

Under the merit system, any employee discharged or suspended from the job has the right to a hearing before the Merit Systems Protection Board. In addition the majority of federal employees are represented by unions, and are protected by collective bargaining agreements which provide for arbitration of any disciplinary action. Thus the modern federal employees enjoys broad job related protections not accorded to federal workers in 1939. Yet there has been no major amendments to the Hatch Act to reflect these changed circumstances.

The First Amendment to the Constitution guarantees to all Americans the right to participate in the political process and to influence the formation of government in accordance with democratic ideals. Any limitation of this freedom must come under strict scrutiny. The Hatch Act as it is currently framed denies this fundamental right to millions of American citizens unnecessarilly, soley because they have selected careers in the federal service. We can see no evidence to support such a broad prohibition on partisan political activities in 1988. We note that over 40 states currently have less restrictive prohibitions on legislative activity than does the federal Hatch Act. We are aware of no significant problems in these states. There is frequently little difference between the duties of federal and state workers of the same profession or job classification. Does anybody, for instance, believe that a typist for HHS has duties different from a typist for the Division of Motor Vehicles in the state of Virginia sufficient to warrant denial of the federal worker's First Amendment rights? We can point to dozens of jobs in the private sector which have broader influence over individuals than the vast majority of federal employees can exert. Yet these individuals successfully perform their duties without any restrictions on their political activity.

NAGE strongly supports HR 3400 which provides a long overdue updating of the Hatch Act. Basically this legislation would allow federal employees the right to participate in partisan political acitvities off the job while prohibiting all political activities on the job. This clear delineation between on the job and off the job activities will free federal workers from the maze of complicated, and contradictory regulations which currently govern their First Amendment freedoms. HR 3400 clearly enunciates the types of federal employee conduct which are acceptable and those which are not. As a result federal employees would no longer have to forgo their rights to participate in the democratic process out of ignorance or confusion over the current regulatory application.

In addition HR 3400 strengthens the rules against coercion to prevent the solicitation of a worker by a superior or the coercion of any individual having business with a federal agency by a federal employee. Under HR 3400 federal employees may not use official authority to influence a person to vote or not vote, to give or withhold a contribution or engage or not in any political activities. Supervisors may not give, receive, or solicit a contribution, from employees over whom they have authority. Employees may not knowingly solicit, accept or receive a contribution from a person who has or is seeking a contract with the employer's agencies.

Mr. Chairman HR 3400 is legislation which enjoyed broad bi-partisan support in the House following months of extensive negotiations with democratic and republican leaders. We are committed to passing this needed reform, and willing to work with leaders in the Senate to do what is necessary to move this legislation. NAGE is as concerned as any organization with protecting employees from coercion. We pledge our support to amend HR 3400 in any responsible manner to guard against coercion. HR 3400 recognizes and protects the unquestionable need for a fair impartial federal workforce. At the same time HR 3400 remedies the weaknesses and inequities of the present law. In this manner HR 3400 balances the dual interests of sound, fair government and protects fundamental constitutional rights value. We would not want it any other way.

Mr. Chairman, we thank you for the opportunity to testify at these hearings. We look forward to working with you to enact Hatch Act reform in this Congress.

Statement of
the Federal Managers Association
before the
Senate Governmental Affairs Committee
February 24, 1988

Thank you for inviting us to testify on Hatch Act Reform legislation. We appreciate the opportunity to express our views on this important legislation. My name is Mike Minahan, and I am National President of the Federal Managers Association. Our organization represents over 20,000 managers and supervisors in virtually all the agencies.

It's always tricky to amend a law that was originally designed to protect workers. The Hatch Act was passed so that Federal employees would be free from on-the-job pressures of partisan politics. Today, it serves as more of a handicap than a help.

From conversations with our members, it has become painfully clear that one of the main problems with the current legislation is that it is hopelessly **UNCLEAR**. What's allowed? What is not allowed? Rarely do two people answer in the same way. It has been our experience that because the law is confusing, it is often over-enforced. In many cases, the law is used as a sword rather than a shield by those that want to stifle free thought and legitimate fact-finding. For example, at one of our Naval Ordinance Stations, the FMA Chapter and another group host a banquet each year. They had invited a former member of Congress, who had chaired the Federal Government Service Task Force. His topic, announced on a flyer and distributed to employees and managers alike, was to be a review of civil service issues. Two or three days before the banquet, the Human Resources Officer at the base called in our Chapter president and the co-sponsoring group's president. The officer stated that both organizations would be violating the Hatch Act if they held the banquet. If they did not cancel the banquet, the officer would stand at the door and write down the names of everyone who attended. The names would be turned over to the Office of Special Counsel as violators of the Hatch Act. The two presidents felt that the officer's actions were wrong, but they did not want to put their members in jeopardy. As a result, the banquet was canceled. The employees were clearly intimidated by the officer's action.

When we heard of this, we wrote to the Office of Special Counsel asking for an opinion of the Human Resources Officer's actions. The reply we received was not helpful.

OSC began by stating that the banquet was not in violation of the Hatch Act. But the OSC concluded by advising that, in order to avoid any semblance of violation, organizations should not schedule events at which candidates could make a speech. At what point in a Member's term would you not be considered a candidate? Would the OSC's opinion always prevent a Federal Manager or employee from inviting a Member of Congress to a speaking engagement? This opinion, as far as we are concerned, is useless and illogical. It points up the problem of enforcing a confusing statute. Federal managers and Federal employees should be free to have briefings on issues of importance to them. With the current Hatch Act in place, even this simple right is in jeopardy.

In an effort to make the Hatch Act more reasonable, FMA joined with other employee organizations and Democrats and Republicans on the House Post Office and Civil Service Committee to work for passage in the House of HR 3400. It passed in the first session of the 100th Congress, by a vote of 305-112. It had 292 co-sponsors. We believe that HR 3400 is a well-balanced approach to allowing Federal employees the same right to participate in the political process as all other employees, while increasing prohibitions against coercion.

Some people have voiced objection to the bill, stating that it will lead to increased politicization of the civil service. This is merely a "scare tactic" by those opposed to giving Federal employees any increased rights. HR 3400 clearly states that there is to be no politicking on the job or on the work site. Federal employees are Democrats, Republicans and Independents just like everyone else. Allowing them to gather signatures or stuff envelopes for a candidate after work is hardly likely to turn them into a political zealot on the job. We know many people, and you do too, who are politically active off the job, but politics doesn't enter into how they perform their job. It would be the same with Federal employees. We, as managers, believe we set a high standard for integrity in the civil service. We would not change that for any reason.

Others have stated that HR 3400 has inadequate protection from coercion. The bill, which we helped draft, very carefully proscribes the actions of supervisors and employees in relation to political elections. For example, no money for campaigns can be exchanged between an employee or that employee's family and a supervisor. No money can be collected in any government building. Federal employees can't ask for, accept, or receive a political contribution from someone who has or is trying to get a government contract.

Anyone who violates the rules is subject to dismissal, fines and up to three years in jail. These are strong and sufficient deterrents.

An argument raised by those who oppose HR 3400 is that managers and supervisors won't obey the law even if it does contain strong protection from coercion. We represent 20,000 managers and supervisors, and we can tell you - this kind of talk is insulting. We work hard to maintain the integrity of the U.S. government. We manage the laws that Congress makes. We certainly obey them. Even looked at in the worst light, it may be true that a few will break the law. But isn't it true that some people break laws? Do we want to forget sexual harassment laws or anti-discrimination laws because someone will break them anyway? We must ask ourselves - is it time to grant Federal employees the same rights as other workers? If the answer is yes, and it is, then let's move ahead.

The Federal Managers Association would like to work with the committee to ensure passage of Hatch Act Reform in the 100th Congress.

We thank you for giving us the opportunity to express our views and I would be happy to answer any questions.

Federal Bar Association

February 19, 1988

TESTIMONY OF JAMES T. BLAND, JR.
PRESIDENT, FEDERAL BAR ASSOCIATION
BEFORE
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE, SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
ON
FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1987
FEBRUARY 24, 1988

In 1939, the Congress passed legislation popularly known as the Hatch Act, which prohibits partisan political activities by Federal workers and thousands of others who are employed by state and local governments. See 5 U.S.C. Sec. 7321-7328. In the nearly five decades since, most Federal employees have been barred from "tak[ing] an active part in political management or in political campaigns" in which any candidate represents a recognized political party or in which any question is specifically identified with such a party. See 5 U.S.C. Sec. 7324(a)(2), 7326.

Since enactment, occasional efforts have been mounted to modify or repeal these restrictions on Federal employees. With limited exceptions, these efforts have failed.

Currently, there is once again legislation, now pending before this subcommittee, which would substantially repeal the Hatch Act limitations on political activity. Entitled the "Federal Employees' Political Activities Act of 1987," H.R. 3400 overwhelmingly passed the House of Representatives in November 1987 and was sent to the Senate, where it was referred to the Committee on Governmental Affairs and, subsequently, to this Subcommittee. Pursuant to the House rules under which H.R. 3400 was considered, the bill passed with no opportunity for debate or amendment on the floor.

For some time, the Federal Bar Association has been concerned with the haste with which this legislation has been racing through Congress. Consequently, on December 12, 1987, the National Council of the Federal Bar Association unanimously passed a resolution which noted the weighty arguments on both sides of the pending legislation to amend the Hatch Act and which, in essence, asked the United States Senate to slow down its consideration of the bill so that these arguments could be fully studied and the bill's potential ramifications and impact could be considered. Additionally, at the request of the Federal Bar Association, the House of Delegates of the American Bar Association, at its midyear meeting just two weeks ago, endorsed a recommendation without dissent, similarly urging the Senate not to pass this legislation but, instead, to proceed with caution in order to fully study and consider the important issues involved. Like the FBA's resolution, the Report accompanying the ABA recommendation noted, especially, a concern with the arguments against passage of this legislation.

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Since our December 12 action, the Federal Bar Association has further studied and debated the merits of the bill. Finally, just last week, the Association's Executive Committee, acting in behalf of the National Council, endorsed a resolution urging the Senate not to pass this bill in its present form and urging the members of the Senate to vigorously oppose passage by every means. In the view of the Federal Bar Association, the legislation contains at least three major flaws, any one of which would be serious enough to warrant rejection of the bill.

I.

First, the bill does not even purport to define the "political activity" which it would permit Federal employees; instead, it would leave this to administrative regulation. Curiously, this precisely duplicates the fundamental problem with the current law. Specifically, the present statute essentially prohibits all political activity except what regulations permit, and the proposed legislation essentially would permit all political activity except what administrative regulations would proscribe. No precision, therefore, is gained statutorily by enactment of H.R. 3400. To the extent problems exist with the status quo, those problems emanate from administrative regulation and not from the statute; importantly, it appears the same may be said of the proposed "fix."

II.

Second, the practical application of the proposed legislation might make political abuse of Federal employees more likely, notwithstanding its continued proscription of superiors pressuring subordinates in any fashion.

Essentially, the provisions of the bill reflect the concept that Federal workers "should be free to engage in any political activities on their own time but should not engage in any political activity on the job." H. Rpt. 100-376 at 14, H.R. 3400 (Oct. 15, 1987). As explained in the House Report, "This means that Federal employees can manage campaigns, solicit contributions, work on phone banks, and even run for office while off the job and away from the workplace. The clear line between on-the-job and off-the-job activities results in a statute which is easy to understand and straightforward to enforce." Id.

Unfortunately, this line may not be as clear and the proposal may not be as easily understood and straightforward as the House Report suggests. The timing of an employee's permissible activity might be clearly defined, but the employee's possible motivation is not: Will it be any less an evil in the future than it has been in the past for an employee, on his or her own time, to actively work for election of a partisan candidate solely out of pressure from that superior, real or perceived? Currently, generally all active political work is illegal, so there is little temptation by political partisans to recruit Federal employees to engage in such activity, simply because such unlawful acts are easily identified. However, if private-time political activity generally were permitted, there would be much incentive to "permit" Federal employees the opportunity to work in partisan elections, simply because the employee's motivation is not so easily identified.

In short, the pending legislation would change the focus from proscribing easily identifiable physical acts to proscribing only those physical acts which are improperly motivated through coercion. In this context, we believe it actually is more likely, as a practical matter, that abuse will occur than under the present statute. Carried to its logical extreme, this well-motivated attempt apparent in this legislation to permit Federal employees the opportunity to actively work in partisan political elections might well portend the end of civil service and the renewal of the political-spoils system.

III.

Finally, the pending legislation contains no provision for excepting therefrom any classes of employees, the members of which are in positions of responsibility which are so fundamental to honest government that any risk at all of abuse is intolerable.

Some may believe that the risks set out earlier are not threatening enough to deprive the Federal workforce generally of the opportunity to be politically active. If so, still there are certain employees who, by virtue of their responsibilities and authorities, are so at the core of honest government that any risk of their compromise is unacceptable. Uniformed and civilian attorneys administrative law judges and other independent adjudicators, law enforcement officials, and election officials may be more sensitive to the possible adverse impact of the legislation than is the workforce generally. By the nature of their duties and positions, they are more likely affected by overt or covert efforts to enlist their political efforts.

It is this class of civil servants, working most closely with political appointees in the management of the Federal government, which would be most likely affected. Yet, it is this class of civil servants which the country can least afford to be adversely affected, for honest law enforcement and elections are at the heart of good government in this country. Unfortunately, this vital concern is not reflected in the pending legislation

Summary

The principal argument in support of the proposal is that Federal employees--like the citizenry at large--should be free to participate fully in the political process on their own time, away from the Federal workplace. The argument is an attractive one, couched as it is in terms of individual rights.

On the other hand, the arguments against any significant change in the status quo which has existed since even before 1939--and against this legislation in particular--are less emotionally attractive but have more substance and merit. Made politically neutral and inoperative (except, of course, the right to vote) by statute, Federal workers are subject to the pressures neither of their superiors in the workforce nor of their fellow employees to actively work for election of partisan political candidates. Individual political opinion is irrelevant in the workplace, where the employees' job is to implement and effect, not to debate and decide. That is how it is--that is how it should be--and that is how it should remain.

BARBARA A. MIKULSKI
MARYLAND

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Testimony of Senator Barbara A. Mikulski Before the Senate Committee on Governmental Affairs on H.R. 3400, the Federal Employees Political Activities Act of 1987

February 23, 1988

Mr. Chairman, I want to thank you for the opportunity to testify today. I commend you for your leadership in holding these hearings to discuss restoring federal employees' rights to participate fully in our political process.

Congress "hatched" federal employees in 1939 to prevent partisan-minded managers from coercing federal employees to participate in political activities. At the time, abuses had stripped federal employees of their individual political rights and threatened to undermine the integrity of the civil service. The Hatch Act was designed to restore and protect the political freedom of federal employees.

In the half-century since the Hatch Act was enacted, however, it has spawned over 3,000 regulations. These regulations often are inconsistent, and lead to confusion over what types of political activities federal employees may participate in.

Some of the more blatant inconsistencies include:

* a Cabinet secretary is exempt from the Hatch Act, and can actively campaign for a candidate, but his or her secretary is covered by the Act, and therefore can't even stuff envelopes for a candidate on his or her own time;

* federal workers may wear campaign buttons, but can't host a candidate coffee in their homes;

* employees may put a bumper sticker on their car, but they can't give one to a friend;

* government workers may write a letter to the editor of one newspaper, but they can't send the same letter to five different newspapers.

Because the law is confusing, it is often over-enforced, and discourages even the limited participation now technically allowed. The current Hatch Act no longer protects federal workers -- it silences them, infringing upon their First Amendment rights of free speech and association.

Hatch Act reform legislation must strike a balance between political freedom for individual federal employees and a federal workplace that is free of political activity and coercion. We need reform that allows federal workers -- when they are off-duty and away from work -- to participate in a full range of political activities. At the same time, we must ensure that any legislation has no unintended negative consequences which could undermine the foundations of our career civil service. As we implement these needed changes, we must make sure we do not recreate the problems that led to the passage of the Hatch Act in the first place.

Opponents of overhauling the Hatch Act argue it is a revolutionary step that would politicize the federal workforce. That kind of rhetoric is both unfounded and untrue. Instead, reforms such as those contained in H.R. 3400 would clear up the present confusion. They would restore the rights of federal workers who have been denied an opportunity to play an active role in America's political process for fifty years.

It's time to stand up for the rights of our federal workforce. So I therefore urge this Committee and my other colleagues in the Senate to grant political freedom to our civil service employees.

America is a nation that was founded upon the principle of liberty and the free expression of one's political preferences. Reform of the Hatch Act will guarantee those loyal Americans who have dedicated their careers to their government that they will have the same rights and privileges of every other American -- the opportunity to fully participate in the political process.

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February 19, 1988

The Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
601 Senate Hart Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Pryor:

I have recently learned that you plan to hold a hearing on Hatch Act reforms, including testimony about Administration opposition to revising the legislation. I want to bring to your attention a related issue regarding Administration opposition to Federal employees' involvement in policy activities.

Last July, the Subcommittee on Human Resources and Intergovernmental Relations, which I am privileged to chair, held a hearing on service delivery of the Social Security Administration (SSA). At that hearing, we heard testimony regarding the possible "muzzling" of SSA employees by the SSA Commissioner. In a newsletter of the SSA Managers Association, Commissioner Hardy was quoted as telling the managers that they should not express their concerns about SSA to Congress. A copy of this article is enclosed.

While this issue is not directly relevant to the Hatch Act, it certainly shows an attitude among at least some Administration officials to restrict employees from providing information to the Congress, even on issues where employees have a unique contribution to make because of their special knowledge and experience.

If I can be of assistance on this matter, please do not hesitate to contact me or Dr. Diana Zuckerman of the subcommittee staff.

Sincerely,

Ted Weiss

TED WEISS
Chairman

Enclosure

TW:dz

mass media December, 1986

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Commissioner Hardy Visits with NC Delegates

Commissioner Hardy set the stage for her presentation by saying she is very proud to be a part of SSA; it has a good heritage and tradition. She added that we are on the threshold of opportunities and challenges and urged the National Council delegates to keep up the momentum we have going and assure that high quality of public service continues.

The field offices are the backbone of SSA and upon us rests the responsibility of the quality of service and the imparting of information about the soundness of the programs. She stressed that the public must have confidence in the integrity of the trust funds.

"Since becoming Commissioner at the end of June, I have been impressed with all of our employees, with their eagerness to be helpful to me and with your professionalism and a real desire to serve our beneficiaries," she said. She wants SSA to be the best organization we can be.

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President's Report

by Steve Bauer

The past two years have been like a roller coaster ride. Starts, stops, thrills, chills, speed, agonizing uphill climbs not knowing what's lying ahead, turns, screams. Yet through it all, just like on the roller coaster, we end up right back where we started from.

So, you ask, "Where did we start, and where did we end up?"

We started with a strong, active membership. The membership is stable (over 4,000), representing 80% of all potential members – a truly remarkable figure for a voluntary organization. Our regional associations are strong. Nine of the ten held annual meetings this year (I reside in the other), and I was able to attend all of them, meeting and listening to over 700 of our members.

We started meeting three times each year in Central Office; and when we got off the roller coaster, we ended up with three Central Office meetings. At each meeting we brought the major concerns of field

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Incoming President's Remarks

by Marvin Behlke

I consider this a great honor—that you have shown your confidence in me by electing me to serve as your President and to represent you, the National Council membership.

I will do all I can to further the goals of this organization and to fulfill my obligation to you. I hope that my performance will exceed your expectations.

I would like to share with you the areas where I feel we should place our emphases during the coming year.

1. **Communications**—The communications I refer to here are the communications within NCSSMA. One of the strengths of this organization is its ability to keep the membership informed. This is done in primarily a downward method, i.e., information from National Council Executive Committee to the regions and then to the membership. We need communications upward as well. You, the members, need to make the Executive Committee aware of what is on your minds —your input is invaluable. So please, phone or write your regional president or one of the officers, committee chairs or MASS Media Editor. Your comments will assure us we are working for what you want.

2. **Communications**—The communications I refer to here are the communications with CO. The NCSSMA has a hard earned reputation for providing central office with timely and meaningful comments on both operations and management issues. These comments may come as the result of an IRD, a committee report, workgroup report, or as a response during our regular meetings. Our comments are considered, and have had some major impact in the past. I want to continue that trend and to assure that we are establishing reasonable positions and that we are preparing and presenting creditable position papers.

3. **Automation**—Automation includes CMP-FOSE as well as PC's. It is an area that will impact on all of us and one which we need to stay abreast of so we can assist in establishing how it will be developed and phased into our offices. To assist in meeting this challenge, we will re-establish the automation sub-committee whose main function will be to give us a better insight into the entire automation area.

4. **CSRS-FERS**--The Civil Service Retirement System and Federal Employee's Retirement System will be on everyone's minds for the next six-nine months as we try to decide what choice to make. We must be assured that we are provided all the tools and information necessary to keep our employees and ourselves abreast of the effects of these two systems on retirement options and future planning. We will continue to stress the importance of CO making this information available to us.

5. **Legislative Actions**—We need to continue our present activities in this area and to strengthen our grassroots effort. The issue of independent agency status will continue to receive attention. We will be looking into and initiating some action relating to employee benefits.

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AN EDITORIAL

Annual Meetings Are A Natural High

With these times of shrinking resources, increasing workloads and the prospect of the tremendous challenge of implementing CMP/FOSE, one can only wonder where he or she can turn for positive vibrations.

One decisive answer is to attend a National Council Annual Meeting. Here, in Chicago, come 40 delegates from all over this great nation with one purpose in mind —to make SSA the best people helper in existence. These forty represent all cross sections of field management; represent all ideals; represent many years of experience in SSA and in the day-to-day activities of getting the job done.

What an experience!! All one has to do is to sit and listen to the speeches, deliberations and decisions which take place in a very important two and one-half days and it is easy to see why SSA functions as it does. No delegate is there for personal gain, for ego; they are all there to share their ideas for the betterment of SSA, its employees, and,

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Commissioner Hardy Visits with NC Delegates

(continued from page 1)

Some of her priorities as Commissioner of SSA include providing the best service we can; improving the way we manage the programs; using the best, and most appropriate technology available, but not let technology run us because we are smarter than technology; recognizing and supporting the vital roles of our employees; educating the public to gain their confidence in the integrity of the trust funds.

She added that we, and our offices, play a very important role in all of these priorities. It not only means getting the job done, but it includes working with our employees. She asked for our support because she cannot get the job done alone.

After talking to many top SSA executives and other levels of employees, one theme seemed to appear each time: the strength of SSA is in its employees. But, she added, SSA's weakness can also be its employees because of a lack of organization discipline. There seems to be a tendency to be "turf conscious and to lack teamwork on occasion." She said that she can see parts of it. "We will succeed together, or we will fail together," she challenged.

Teamwork requires professionalism in terms of management wherever we are in the organization. Employees at every level manage something --even getting to work on time. Communication is important; it requires communication up as well as down. It requires loyalty and commitment to objectives and each other. We are interrelated.

She encouraged managers to debate and discuss and she will listen to as many as she can. "But once the decisions are made, I expect all of the SSA managers to view those decisions as a priority and to see that they are implemented."

She expressed concern over reports about individual managers communicating directly with Congressional staff, Congress, and others in attempts to undermine, undo, or get decisions reversed or modified. She feels that kind of informal, post decision-making lobbying undermines teamwork and is neither professional nor tolerable.

She told delegates that we must provide our employees with lots of good feedback, positive or negative. They need to know they are doing a good job and they are appreciated.

A draft of a GAO study of SSA management indicated that 85% of non-managerial employees said that positive supervisory feedback was important to motivate them into doing a good job. But 41% said their supervisors have not used feedback to motivate them, and 27% indicated they have received inadequate feedback on job performance.

People need periodic affirmation and she said we are smart and creative enough to do that. We need to use the formal recognition programs we have and the informal ways available to work with our employees. "Thank you" means a lot to people.

Systems modernization is in full swing. SSA has purchased 22,000 terminals. She has made a commitment to keep pace and there is a constant evaluation to make certain we are where we are supposed to be. She wants to be sure we are not purchasing equipment just for glitter or because someone says it will benefit us. The modernization plan is excellent though not perfect. She added that in an organization such as ours, perfection every day is hard to achieve. But we must do our best to be sure the system plan succeeds.

Streamlining our procedures also means streamlining our organization. She believes the combination of attrition, of staff deployment and some staff outstationing will be the way to achieve our goals. She emphasized that she does not plan to have a RIF. RIF is not the best way to manage or to provide the best service to the public. She did say there will be some movement of people on a voluntary basis and down the line there may have to be some involuntary movement, although she does not see that happening. She is open to suggestions on how to achieve reductions.

Attrition is the primary way, and 99% can be met through attrition. We may have to ask employees to voluntarily go from a place that has less workload to a place with more workload. Another option may be to move some of the workload. The issue is what is the best way to do this. She is open not only to the ideas but also the "how" to do this. We have a challenge to retrain our employees for the new technology, and she is looking at the whole process.

The question of early out is often asked. She admits her feelings are mixed, and she believes that many of us feel the same. All that she hears about tradition in SSA indicates to her that we rightfully depend on those who "come up the line," and those peole are generally going to be the ones on the early out list. "Do you let all of that crowd go?" she asked.

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President's Report

(continued from page 1)

management to the Deputy Commissioner for Operations and the Acting Director of FLSS. As always, our voice was heard — sometimes our ideas were adopted, other times, not.

We started communicating with our members through MASS Media and weekly mailings. We ended with a copyrighted MASS Media and thicker weekly mailings.

We started with a thrust to develop our lobbying activities. We ended with a proud record of being invited to testify before numerous congressional committees on topics including Independent Agency Status, the Federal Employee Retirement System, and proposed pay system reform.

We started devoted to improving the image of Federal employees. We ended as a member of the Public Employees Roundtable with an active Public Image Committee and as a board member on the newly formed Federal Employees Education and Assistance Fund.

We started devoted to improving field office technological resources and ended on the verge of FOSE implementation and having PC's in FO's.

We started without independent agency status and despite a 401-0 House vote, ended without it.

We started stressing certain concepts, such as undue statistical pressures, mandated reviews, unproductive procedures, adequate staff, and work to be performed in field offices. We ended stressing the same topics.

By no means do I mean to imply we stood still. Rather all of our activities brought us back to where we started—which is where we should be: A professional, managerial association dedicated to the furthering of the goals of SSA and improving the image and benefits of public employees.

Where did I end up after 2 years as president? Still in Minot. But much, much richer. Not monetarily, but infinitely richer due to the friendships I have developed with so many of you over the years.

Commissioner Hardy Visits with NC Delegates

(continued from page 2)

There are pros and cons on this issue: you let some of your best people go; you make way for people coming up. It is a tough issue to weigh. She promised to discuss this with the OPM Director, but her gut feeling is to not go for early out.

The bottom line is not do anything to harm our workforce or lessen the level of service to the public. Our challenge is to see to it that we achieve our goals through working with our employees. The answer is not to refrain from downsizing. She is committed to reductions; she thinks we can be leaner and still be the best government agency.

Turning to operations, she mentioned some of the initiatives under way. She wants us to increase the use of the telephone. She complimented the service provided by TSC's. How do we adjust our services to fit the population we serve? There is a lot of creativity in SSA and she is confident that we will meet the challenge now and down the road.

She believes we can have good appointment systems in all field offices. Everybody should be able to call and make an appointment. That is one service in which we should take pride. She is set in moving towards a folderless system and we are getting there. There has got to be a way to have folders disappear and still have the means to accomplish our tasks. She is appalled at the complicated systems of POMS and instructions. We should work toward simplifications in this area and is open to suggestions.

As for disability, she said SSA is working closely with the states on how best to come up with productivity measures, how best to work with them this year. We also need to look at the program in terms of simplification. But we should also be concerned with regaining our good standing with the public. We should be paying those who are disabled and not paying those who are not. She admits this is easier said than done.

All of these initiatives will lead us to a stronger program and definitely increase productivity. It will also improve public confidence in the programs. The public should realize that Social Security has many purposes and not look at it just on the pension side.

She closed by saying that we have a lot to do, and she reminded us that we are all in this together.

Floridian Wins National Council Essay Contest

Dorrith Leipziger, Branch Manager in Hileah, FL, was the First-Place winner in the essay contest sponsored by the National Council. Dorrith's efforts won her a trip to the 17th Annual Meeting. Her essay, titled "Social Security: My Vision of How Social Security Should Serve and Educate the Public and Measure Its Service," really hit home on what service to the public means.

Excerpts from her paper will be shared with the readers of the MASS Media in another issue, but we want to tease your curiosity by giving you a sample of her wisdom.

". . .We all know that the service expected of us can't be measured entirely in numbers. Isn't it time to address this issue with the zeal and ingenuity we have lavished for so long on the mechanics of our business?"

"Numbers measure efficiency, and, of course, all taxpayers have a right to expect us to be efficient. But, since the services we render are as unique to every person as he or she is different from everyone else, it's just not enough to tell them, or Congress, for that matter, that the average claim takes x number of days, or that everything will be done right unless they are those two out of a hundred where we mess up. Mr. & Mrs. John Q. will measure our service by how they are treated by our staff . . ."

Dorcas Hardy
Social Security Commissioner

In resigning his job with the State Dept., Marvin Kalb said his basic choice was "whether to allow oneself to be absorbed in the ranks of silence, whether to vanish into unopposed acquiescence, or to enter a modest dissent."

Incoming President's Remarks

(continued from page 1)

6. **Membership**—We need to congratulate ourselves on the job we have done to bring our National membership total up to the 80% level —over 4,000 members. This is something we need to work on continuously. Our possible membership changes daily; therefore, we need to work toward maintaining a high percentage of members as well as total members.
7. **Resolutions** –In the past several years, I have seen our resolution process improve and become more meaningful. As a result, we have been able to use our resolutions as the objectives for the NCSSMA Executive Committee. I want to continue to use the resolutions in this manner. I think this year's resolutions are excellent.
8. **Delegations - Standardization** — I am very interested in pursuing more delegations for field managers, while at the same time, resisting efforts to standardize offices.

There are many more areas where we can place emphasis; however, if we can accomplish what we have set out to do we will have a successful year.

I am looking forward to this next year. I know it will be exciting for me, and I hope you will all share in this excitement with me.

Again, I thank you for your support. I will do all I can to uphold your confidence.

Together, we will grow and become even more successful.

Janice Warden Tells NC What's Happening in FLSS

Janice Warden, Acting Director of FLSS, spoke to the NC delegates at the 17th Annual Meeting. She praised the fine working relationship between FLSS and NCSSMA.

She expressed Herb Doggette's regrets in not being able to speak to the delegates. Herb's father passed away just before the Annual Meeting.

One of the primary issues we are facing is the implementation of CMP/FOSE. She is concerned about the ability of Field Operations employees to provide the same level of service while the transition is taking place. She is convinced we can do it, but it will require a great deal of field management planning.

They have had meetings with the RC's and discussed how to accomplish the training for FOSE. They found that putting the training plan into action was a bit different than from the macro point of view from CO. Each RC has been asked to come up with specific plans.

continued on page 4

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March 3, 1988

Honorable John H. Glenn
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your Committee recently held hearings on H.R.3400, the Federal Employees'Political Activities Act of 1987. I am writing to inform you of the opposition of the American Bar Association to enactment of this legislation. I would appreciate your including this letter in the record of your hearings.

At the Association's Midyear Meeting in Philadelphia last month, our policy-making House of Delegates adopted the following resolution:

> BE IT RESOLVED, that the American Bar Association urges the President of the United States and the Senate of the United States not to approve the Federal Employees' Political Activities Act of 1987 (H.R.3400), in its present form, or its substantial equivalent, but to fully and carefully study the potential impact of this legislation on the fair and impartial administration of the laws of the United States, particularly as it may relate to law enforcement officers and officials, government attorneys in and out of uniform, administrative law judges, administrative judges and other independent adjudicators, and election officials.

It is our Association's belief that the nation's electoral processes should be kept as free as possible from inappropriate and undue influences. The Hatch Act has served a viable function in insulating federal employees from undue pressures by their superiors in the workforce or their fellow employees to actively work for the election of partisan political candidates. Any change in this existing system should be made only after the most thorough study and consideration of its full implications.

Proponents of the legislation state, in the House Committee Report, "The clear line between on-the-job and off-the-job activities results in a statute which is easy to understand and straightforward to enforce." We question the existence of such a clear line. The *timing* of an employee's permissible activity may be clearly defined, but the employee's possible *motivation* for such activity is not. Will it be any less an evil in the future than it has been in the past for an employee on his or her own time to actively work for the election of a partisan candidate out of a sense of loyalty to his or her superior or out of pressure from that superior, real or perceived?

While we understand and appreciate the legislation's effort to make federal employees free to participate fully in the political process on their own time, we do not believe H.R.3400 would achieve this objective without consequences which are unacceptable. Participating in partisan political activity as a result of pressure from one's bosses at work is a "freedom" which federal workers can well live without.

Sincerely,

Robert D. Evans

Robert D. Evans

RDE:dc-m
00150

cc: Honorable Lawton Chiles
Honorable Sam Nunn
Honorable Carl M. Levin
Honorable Jim Sasser
Honorable David H. Pryor
Honorable George J. Mitchell
Honorable Jeff Bingaman
Honorable William V. Roth, Jr.
Honorable Ted Stevens
Honorable William S. Cohen
Honorable Warren Rudman
Honorable John Heinz
Honorable Paul S. Trible

STATEMENT
OF
JOSEPH I. LIEBERMAN
ATTORNEY GENERAL
OF THE
STATE OF CONNECTICUT

BEFORE THE

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

FEBRUARY 24, 1988

Mr. Chairman and members of the Committee. My name is Joseph Lieberman and I am Attorney General of the State of Connecticut. I offer this statement to urge you to support H.R. 3400. This bill would allow federal employees to participate in political activities, including candidacy for office, like their fellow citizens. I also urge the Congress to amend federal law to extend these same privileges to state and local employees.

As Justice Black pointed out in his dissent in United Public Workers v. Mitchell, 330 U.S. 75, 67 S.Ct. 556 (1947):

> Legislation which muzzles several million citizens threatens popular government, not only because it injures the individuals muzzled, but also, because of its harmful effect on the body politic in depriving it of the political participation and interest of such a large segment of our citizens.

330 U.S. at 111, 67 S.Ct. at 575.

It is time for Congress to recognize that Justice Black is right. Public employees are just as much a part of the body politic as anyone else. Our political process depends on popular political participation in order to work properly. There is no reason for federal law to deprive a large and constantly growing sector of the populace, public employees, the right to participate in political activity so long as any such activity is done on their own time and without the use of any public resources. Excluding large segments of the population from political participation will ultimately weaken our system of government.

The provisions of H.R. 3400 go a long way to eliminating this inequity. However, H.R. 3400 does not go far enough. It only removes the restictions insofar as federal employees are concerned. This bill does not address existing federal restrictions on state and local employees.

The Hatch Act affecting state and local employees, 5 U.S.C. S 1501 et seq. prohibits political activities by state and local employees. It does this by requiring that federal funds will be withheld from the public employer if the offending employee is not removed, or is removed and rehired witin eighteen months. 5 U.S.C. S 1506. If state and local governments give in to the financial pressure, then their employees' opportunity to participate in the body politic is effectively destroyed.

The result of H.R. 3400 passing in its present form is that federal employees could engage in political activity, including candidacy for office, but that state and local governments would be financially penalized for permitting their employees to engage in the same conduct. This is unfair and illogical. The federal government certainly has a stronger interest in regulating its own employees than in regulating state and local employees. There is no reason to apply stricter controls on state and local employees than on federal employees. Therefore, I would also urge an amendment to the Hatch Act applicable to state and local employees removing from federal law the prohibition on candidacy.

Federal action to prevent political activity by state employees is a very real issue in Connecticut. My office is presently participating in two matters in which the Merit Systems Protection Board has taken action regarding state employees.

Early in 1985 I became aware of the possibility of federal agencies looking into possible Hatch Act problems in Connecticut. Frankly, I was quite perturbed. Connecticut is a state that very carefully regulates political activity and it seemed that federal action was unwarranted.

Connecticut law expressly allows employes to engage in political activity, including candidacy. Conn. Gen. Stat. § 5-266a. However, political activity on state time or with state resources is prohibited. Employees may not coerce political contributions or use their official position to influence the results of elections. Conn. Gen. Stat. § 5-266a. An employee who violates these provisions may be fired. Conn. Gen. Stat. § 5-266d. In addition, the Connecticut State Ethics Commission has issued regulations defining conflicts of interest for state employees who are local office holders. Regulations of Connecticut State Agencies § 5-266a-1.

Connecticut law is very carefully balanced to allow state employees to participate in political activity, if they wish to. This law still preserves the integrity of state government by preventing political activity on the job or with public resources.

Nevertheless, in March of 1986 the Office of the Special Counsel filed a complaint with the Merit Systems Protection Board claiming that a state employee who had been a candidate in a Democratic Party primary for nomination to a position on the Hartford City Council, violated the Hatch Act. On May 12, 1987 the Merit Systems Protection Board determined that the Hatch Act was violated and on September 29, 1987 issued an order requiring the withholding of $90,150 in federal funds from the State of Connecticut. Special Counsel v. Wayne Camillieri and the Connecticut Department of Human Resources, Docket No. HQ12068610010, U.S. Merit Systems Protection Board. Both orders of the Merit Systems Protection Board were appealed by the State of Connecticut and by the employee to the U.S. District Court for the District of Connecticut, in accordance with the provisions of 5 U.S.C. § 1508. State of Connecticut, Department of Human Resources v. U.S. Merit Systems Protection Board, No. H87-406 (JAC) and State of Connecticut, Department of Human Resources v. U.S. Merit Systems Protection Board, No. H87-779 (JAC). These cases are still pending in court.

In addition, in March of 1987 the Office of the Special Counsel filed a complaint with the Merit Systems Protection Board claiming that another state employee, one who had been the Republican Party candidate for Probate Judge in Wallingford, Connecticut, violated the Hatch Act. On January 26, 1988, the Merit Systems Protection Board again determined that the Hatch Act was violated. Special Counsel v. Jack Winkleman and the Connecticut

Department of Human Resources, Docket No. HQ12068710008, U.S. Merit Systems Protection Board. This order has been appealed by the State of Connecticut and this employee to the U.S. District Court for the District of Connecticut. State of Connecticut, Department of Human Resources v. U.S. Merit Systems Protection Board, No. H88-65 (JAC). In the event that the Merit Systems Protection Board issues an order requiring the withholding of federal funds in this case, I anticipate that that order would also be appealed.

I expect that the problems associated with federal enforcement of the Hatch Act against Connecticut state employees will be a recurring problem. As more and more state employees exercise their state law right to be candidates for public office we will find ourselves locked in a constant battle with the Office of the Special Counsel and the Merit Systems Protection Board.

The actions by the Office of the Special Counsel and the Merit Systems Protection Board highlight what I think are very serious problems with the attempt by the federal government to regulate conduct of Connecticut state employees. The application of the Hatch Act in Connecticut seriously undermines the state personnel system. In my opinion this federal regulation is impermissably intrusive in that it amounts to the federal government determining who the state may employ and under what circumstances. Equally troublesome is the fact that this federal regulation seriously chills the ability of approximately 50,000 Connecticut citizens who happen to be state employees to fully participate in our body politic.

These legal issues have been raised in the cases which are now pending in court. We are hopeful that the federal courts will now recognize that Justice Black was right in saying that the First Amendment protects public employees' right to participate in the political process. But it is unfortunate that the State of Connecticut has to be involved in this kind of unnecessary litigation to protect the constitutional freedoms of its employees, and to prevent such extensive federal intrusion into Connecticut's personnel system. This is particularly true since Connecticut is a state with very carefully drafted laws and regulations designed to protect the employees rights while still prohibiting activity that could adversely affect governmental integrity.

Congress now has the opportunity to remedy the injustices caused by restrictions on political activities. The provisions of H.R. 3400 go only part of the way by permitting greater political participation for federal employees. This effort, already overwhelmingly approved by the House, is one that I strongly support. However, now that Congress is seriously considering these issues, I strongly urge it to extend to state and local employees the same right to be a candidate that it is extending to federal employees.

SENIOR EXECUTIVES ASSOCIATION

P.O. BOX 7610 • BEN FRANKLIN STATION
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202-535-4328

February 19, 1988

Senator David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office & Civil Service
Committee on Governmental Affairs
601 Senate Hart Office Building
Washington, D.C. 20510-6252

Dear Senator Pryor:

In late October 1987, the Senior Executives Association mailed to each of our members a letter which briefly described H.R. 3400, the Federal Employees' Political Activities Act, and requested their views with regard to the bill. The Board of Directors felt that member input was critical with regard to the Hatch Act since strong arguments have been put forth both for and against revision. I believe that you will be interested in reviewing the survey results, which I am enclosing along with a copy of the questionnaire.

You will note that, of the 21% of our members who responded, 74% oppose the bill, 22% favor it, and 4% are undecided. To provide a fuller flavor of the views of Senior Executives, I am enclosing for your further information a transcription of the comments which were provided by the respondents.

We understand that you are holding hearings on this matter next week, and we would appreciate your including in the record of the hearing both this letter and the enclosed survey results.

If you or your staff have any questions, or would like additional information, I would be pleased to provide it.

Sincerely,

Carol A. Bonosaro
CAROL A. BONOSARO
President

Enclosures

cc: Senator Glenn
Senator Roth
Senator Stevens

Senior Executives Association

HATCH ACT SURVEY RESULTS

as of 12/2/87

1. Do you favor or oppose the Hatch Act bill described above?

Favor	105	(22%)
Oppose	356	(74%)
Undecided	19	(4%)

2. Would you favor the bill if it:

Exempted Federal executives from its coverage?

Yes 68 (14%) No 387 (81%) No response 25 (5%)

Were limited to state, county & city elections?

Yes 136 (28%) No 317 (66%) No response 27 (6%)

Exempted employees of particular agencies, e.g., IRS, Dept. of Justice?

Yes 39 (8%) No 373 (78%) No response 68 (14%)

3. Should SEA support the bill described above?

Yes 96 (20%) No 336 (70%) No response 48 (10%)

Should SEA support the bill with changes?

Yes 110 (23%) No 257 (53%) No response 113 (23%)

Should SEA oppose the bill described above?

Yes 251 (52%) No 75 (16%) No response 154 (32%)

Should SEA take no position on the bill?

Yes 26 (5%) No 231 (48%) No response 223 (46%)

NOTE: Percentages do not necessarily total 100 due to rounding.

P.O. BOX 7610 • BEN FRANKLIN STATION • WASHINGTON, D.C. 20044
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HATCH ACT SURVEY COMMENTS

AGAINST LIBERALIZING ACT

1. "In the long run the Hatch Act is beneficial because it forces a 'hands off' policy" and "instills the notion that careerists are neutral."

2. "There is already too much political influence" ...The civil service will be "torn to pieces by political parties".

3. "What needs fixing? Civil servants can express concerns through unions and employee organizations."

4. "If it ain't broke, don't fix it."

5. "Will devastate the civil service."

6. "Would destroy the credibility of the career people."

7. "There is no way you can work for and serve one political party while campaigning for the other."

8. "The act would put civil servants under great pressure ... I think about hatchet men like Meese... with a lever like that. I think about all the arm twisting that goes on, even now...over CFC."

9. "The Executive Service will be politicized to an intolerable degree."

10. "The Hatch Act is our only shield. The public would lose respect without it."

11. "The proposed law would exacerbate tensions between political appointees and civil servants."

12. "Those who want full political freedoms should work elsewhere."

13. The proponents of the Bill are naive."

14. "The Bill would result in unending political pressure to contribute time and money."

20. "Opponents will be pegged if they are on the losing side, particularly if there is a change of administration."

/

21. "Would further harm our public image."

22. "Would open pandora's box on abuses."

23. "One step back to political patronage."

24. "Would politicize civil service."

25. "Would result in an attempt to increase political contributions."

26. "No protection against undue interest."

27. "Quality of work would plummet."

28. "Is nothing learned from history?"

29. "There has been massive abuse of current Act. Things would be worse with the changes proposed."

30. "We need less political involvement, not more."

31. "To remain politically neutral is a price a career employee should be willing to make. The public must retain its confidence in the impartiality of the civil service."

32. "Would introduce divisions in the Federal work force."

33. "Subordinates in any agency would probably feel (real or perceived) pressure to support candidates, positions, or policies promoted by a politically active superior. Conversely, superiors might feel intimidated by subordinates who are politically associated with the superior's boss."

34. "The bill would seriously cripple the merit system."

35. "As a legislative employee and early executive branch employee, I ridiculed the Hatch Act. Now time and events have convinced me of its wisdom."

36. "The bill would not free civil servants but open doors to furtive intimidation of senior civil servants by partisan political appointees. Even now managers are often 'suspect' if their membership or registration in an opposition party is known."

37. "I have seen too many abuses in my 18 years with my agency under the current strict legislation to favor any major changes in the legislation. We have a responsibility in the public sector to present an image to the public of decisions and actions being balanced, fair and nonpartisan. We have a long way to go in the perception of the public. Having active participation in partisan politics by federal workers would damage any perception of impartiality.

A second concern is the coercion that will be exercised on Federal employees. It can be subtle and difficult to restrict or even define. Perhaps other agencies have not had atmosphere similar to my agency's but the subtle pressures will occur - have no doubt."

38. "The opportunities for abuse are just too great. The CSR Act was enough of a gift to those that would politicize the operations of nonpolitical functions."

39. "The pressures on Federal executives are already intense and would become worse."

40. "The abuse by political appointees would, in my opinion, far outweigh any benefits derived. If federal and other government employees are frustrated with the current system, let them resign and relieve the frustrations."

41. "I believe the Federal civil service is a profession in itself; I'm currently on hard times, but the answer is not this slipperiest of slopes. If Federal employees want to be politicians, let them quit their profession first."

42. "I am really concerned about the solicitation of funds ...even if it is outside governmental premises."

43. "It would be a tragic day ...to permit the Federal workforce to become political."

44. "The additional 'freedom' in exercising rights of citizens would quickly turn into political favoritism, with different sets of SES careerists and GS careerists 'in' or 'out' of favor depending on election results."

45. "Liberalizing the Hatch Act would be a most dangerous step for the career service, and, I believe, for our democracy."

46. "The bill would result in the political corruption of the civil service system and would politicize the SES."

47. "The woods are full of political wolves just waiting to get at the flock."

48. "Senior executives are already exposed to too much of the whims and caprices of political appointees. This legislation would do nothing but exacerbate that political leverage."

49. "The current Hatch Act has at least instilled generally (I think) the notion that the career executive is a relatively politically neutral being."

50. "I oppose anything that might make career employees more vulnerable to political pressure. Some concession of my rights as an American to engage in political activity is a small price for avoidance of such pressure."

51. "There was a need for the Hatch Act when it was passed. That Act is still there and to allow partisan politics back into the 'career' service would have serious program consequences and undermine the stability of the Federal career service."

52. "Hatch Act change is appealing at first glance, but will certainly lead to abuses. There is no real way to adjust this bill to avoid abuses."

53. "There is already more than enough political pressure."

54. "There is no question that Federal executives who interfere with politics would have a rough time."

55. Given the current inadequate Federal salary and benefit package which is unlikely to be improved any time soon, 'relief' from the Hatch Act at this time can only lead to a fast deterioration of a competent civil service. Only Hacks need apply."

56. "Political activity may contribute to a free and open society, but it certainly does not contribute to effective, orderly operation of the government."

57. "The civil service already has too much political influence exerted on it. Civil servants need to stay out of politics or they will be torn to pieces by political parties."

58. "I [have] witnessed subtle efforts by higher up Federal officials to cause subordinates to support the prevailing political party by making contributions and otherwise engaging in political activity. Although I realize this activity would continue to be prohibited, I appreciate the blanket 'exception' afforded me by the Hatch Act.."

59. "We need more protection, not less, especially with an election year coming up."

60. "The bill could be very harmful for professionals in career service. Incoming appointees would be under pressure to award those who worked the hardest for the party that won."

61. "I am concerned there would be subtle pressure for contributions or to disclose political affiliation."

62. "Can you imagine the prima donnas that will develop if the Hatch Act is lifted.."

63. "...this bill would cause enormous pressure to engage in partisan political activity and put their jobs at risk."

64. "Present law is O.K. If it ain't broke don't fix it."

65. "SES concept has already not lived up to expectations --salary, bonus, etc. This legislation further frustrates senior executives with additional political abuses. SES executives will become pawns..."

66. "This would likely be the begining of the end of the merit employment system."

67. "Political pressure in SES in my agency is strong. This bill would make it much worse."

68. "While I believe the Hatch Act revisions will favor Federal employees in general and by consequence senior executives, I fear that and more other Federal executives will be under severe political pressure from their political supervisors unless they are exempted from its coverage."

69. "Senior executives would be particularly vulnerable to the pressures of the high level political appointees under whom they might be serving."

70. "We've experienced so much political interference recently even with the Hatch Act, to be in favor of increasing is a hundred fold."

71. "Variety of protections? Where? Illusory! Lateral transfer around country by parties, ignore chain of command, isolate, other tactics far beyond reach of MSPB. Federal Government has too little good tough political policy input now. Too much bad, petty, interagency, short term, hands-on messing around., This bill would be a disaster."

72. "This bill is a dangerous attack on the independence and integrity of the Federal Civil Service. Limiting on the job political activity would not prevent political appointees from putting pressure on to 'join the cause' after hours."

73. "It's bad enough now... Federal employees should make their decision on this issue prior to pursuing Federal employment."

74. "Federal employment at all levels is a full time job. Service for all without regard to political affiliations is the proven good of government service and it cannot be a reality by running for dog catcher."

75. "Widespread abuses of the merit system exist at this time. In 1981 I was removed from my job with the casual explanation that it was for "political reasons."

76. "For lower level employees, I see no problem, but a good working relationship between senior executives and political appointees requires that the former not be suspected of supporting the opposition party..."

77. "The career federal service has been compromised and beat on enough. I oppose anything that continues this process and the proposed revision of the Hatch Act is a serious threat."

78. "Potential for abuse or perception of abuse too great relative to official performance of duties."

79. "I am most concerned with the insidious effect of (1) appearing to not be on the management [political] team by not joining them in legal political activities and (2) favoritism by appointees and currying favor by employees which will inevitably follow."

IN FAVOR

1. "Federal employees need some political muscle badly..."
2. "As an attorney, my ability to seek a judgeship is seriously handicapped by [the present] Hatch Act."
3. "I want to be able to support candidates who will support the civil service.... I am frustrated at seeing civil servants used as doormats."
4. "The Feds are disenfranchised. The Act would allow us a political voice for better pay, respect, benefits."
5. "The Feds should be allowed to participate in local politics, not Federal."
6. "Execs are used to working in a political culture, they can withstand pressure."
7. "Feds whose names are in political ads should not be identified as Federal employees."
8. "Since other classes of workers can balance potential conflicts of interest, why can't Federal employees?"
9. "GM people are just as vulnerable to pressure as execs - policy should be the same for them."
10. "Bill gives us more to lose than gain."
11. "Exempt SES and PMR's from Bill."
12. "Hatch Act denies freedom of speech to Federal workers."
13. "Needs changes to allow workers to protect themselves."
14. "The administration has already found ways around the Hatch Act."
15. "As Federal employees, we have lost rights that all other Americans enjoy."
16. "Bill makes a difference in the way the system treats federal civil servants."

17. "Federal employees should have their full rights just as other citizens."

18. "All things considered, I think the bill is an appropriate and timely change. Let's try it."

19. "At present federal employees are second class citizens when it comes to the political process."

20. "We need tongue."

21. "Politicans can hone in and cut out our benefits almost at will until we have the political power to fight back. I think it's unfortunate, but that's the way things have become. So I reluctantly favor this bill."

22. "No Federal employee should be required to surrender first amendment rights as the price of employment."

23. "Would make it possible for a larger number of Americans to participate directly in the political process."

OTHER

1. "There would be a need to re-examine the implications of the time after the 120 day safeguard after a new administration re-assignment."

2. "Postal workers should be allowed to participate in politics."

3. "Limit Fed. employees to issues and legislative options, don't support candidates."

4. "Give latitude in local elections."

5. "I have been the subject of political discrimination on reassignment."

6. "The federal civil service status is apolitical.... Federal employees, however, should not be denied opportunities for state, county, and city elections."

7. "To distinguish between SES and non SES could place executives in a squeeze position from which there would be no appeal."

8. "Restrict legislation to allowing participation in other state, county, and local levels of government."

9. "Political action is okay in local elections."

10. "Allow for state and local elections only."

11. "If collective actions of the Federal Service were to have a noticable effect, we would be in trouble."

12. "Limit to state, county."

STATEMENT OF THE
UNITED STATES POSTAL SERVICE
BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ON H.R. 3400

March 1, 1988

This statement provides the views of the Postal Service on H.R. 3400, the proposed "Federal Employees' Political Activities Act of 1987."

H.R. 3400 proposes to relax political activity limitations imposed by the Hatch Act on civilian employees of the Federal Government, including the men and women responsible for collecting, processing, and delivering the nation's mail. While expanding the scope of permissible political opportunities, this legislation attempts to preserve existing protections against political coercion. As envisioned by H.R. 3400, an employee could actively participate in a partisan political campaign off duty and away from the workplace and have legal protection against coercive tactics aimed at gaining support or financial contributions for a party or candidate embraced by a superior.

Insofar as H.R. 3400 seeks to allow active participation by Federal and postal workers in partisan campaigns, it would sacrifice much of the original conception of the Hatch Act as a shield to protect Government employees, as well as the public, in the free exercise of their individual political opinions. We are concerned that such a fundamental change would adversely affect the progress which has been made since postal reorganization in cultivating a professional postal career workforce and removing partisan politics from the day-to-day operation of the nation's postal system.

For many years, the old Post Office Department, more than most agencies, had the reputation of an organization permeated by political considerations, notwithstanding Hatch Act and other civil service requirements. Since the passage of the Postal Reorganization Act in 1970, the Postal Service and its employees have worked hard to build public confidence as an organization providing the best possible mail service to the nation, without regard to partisan politics. In delivering this service, postal managers and employees all across the country take actions and make decisions every day based upon the best interests of the nation's postal system and its customers, and not upon any political considerations.

While the enactment of H.R. 3400 would not automatically turn the clock back to pre-postal reform days, we are concerned that anything tending to reinject partisan considerations into the postal arena could severely damage public confidence in the fairness and integrity of the Postal Service. While we cherish our own and every individual's inherent rights under our political system to vote and to hold partisan views, we are not convinced that individual public servants can be expected to be, and to be seen as, scrupulously nonpartisan in their official duties if they are also permitted and encouraged to become deeply involved in heated partisan contests in their personal capacities.

Prohibitions against improper mixing of personal partisanship with official activities are not a sufficient answer in our view. From the official choosing among parcels of real estate to the letter carrier casing his mail or chatting with a customer in the solitude of his daily rounds, the Postal Service is a vast enterprise involving large possibilities for political abuse. To be effective, legal restraints must be based on a code of conduct which it is reasonable to expect employees will follow. We doubt that any system for policing the behavior of employees can be fully successful if people are asked to act too differently while in the public's service from how they are expected to act off the job.

Any experience with perceived political partiality would undoubtedly cause people to question the impartiality of the Postal Service as a whole. Postal employees are influential -- and in some cases the only -- Government officials in communities across the country. Close identification of the local postal representative with the campaign of a party or candidate might well be taken by some as implicit Government endorsement of that party or candidate. Such perceptions could seriously impair the Postal Service's ability to carry out its responsibilities.

For example, the Postal Service administers bulk mail permit and other classification rules governing access to the postal system and eligibility for beneficial postage rates. Partisan disputes as to whether particular candidates or their supporters are properly using these permits or special rates are not uncommon during election years. While such disputes may eventually be resolved in the courts, postal employees must scrutinize mailings or permit applications at the time of mailing to see that applicable rules are followed. It is important both to the candidates involved and to the general public that the postal employees responsible for making these judgments not have their impartiality called into question by partisan participation in the same campaigns in which they serve, to an extent, as referees.

The same kind of consideration applies to the handling and delivery of the millions of pieces of political, campaign, and other election-related mail entrusted to the Postal Service. In addition to providing a critical communications channel for fund-raising and electoral appeals, the Postal Service is increasingly used as an extension of the ballot box as greater numbers of voters are permitted to cast their ballots by mail. Some communities have even experimented with conducting elections entirely by mail. It is essential to the integrity of the democratic election process, as well as to that of the Postal Service, that the mails be free from even the inference of partisan taint.

Even under today's conditions, charges have been made that postal employees may delay or "lose" the mail of one candidate or give preferential treatment to that of another. While we have not found these charges to be warranted, it is likely that concerns about politically motivated handling of the mail would increase if postal employees are allowed to take the active and highly visible role in politics envisioned by H.R. 3400. Every American should be able to use the mails free of suspicion that his communications might be shared, mishandled or delayed because the Postal Service, its workforce, or some particular local employee that he knows has become deeply involved in a partisan campaign. Any perception of partisan prejudice active in the Government postal system could produce a chilling effect on political expression. The effect might be especially chilling for those holding the political views of a minority in the local community.

H.R. 3400 does include certain prohibitions designed to address some of the issues we have raised. Yet, these provisions would seem to offer little real protection against the type of tacit coercion which would almost certainly flourish in the Federal workplace if existing restrictions on partisan activity are removed. For example, while proposed 5 U.S.C. §7323 would prohibit the use of "official authority or influence" for political purposes, it fails to clearly cover an individual's authority derived from union office. And, while a manager would be prohibited, under proposed 5 U.S.C. §7324, from seeking political contributions from his or her subordinates, the bill is silent on the question of whether an individual could request contributions from a fellow employee at or above his own grade level. The bill also fails to prohibit the solicitation of political contributions while on duty, in uniform away from the workplace or in a Government vehicle, although such activity would clearly violate the spirit of the bill. And, unlike earlier measures aimed at revising the Hatch Act, H.R. 3400 would not retain restrictions on political activities of persons serving in certain sensitive, functional areas -- namely, those related to national security, law enforcement and procurement.

The provisions relating to leave requirements for Federal and postal employees who become political candidates also provide cause for concern. Under proposed section 7326 of title 5, an employee would be entitled to take leave, paid or otherwise, to pursue his or her candidacy unless "the exigencies of the public business" require the employee's presence at the workplace. Furthermore, an agency could not require an employee-candidate to take leave unless it determined that the activities relating to the individual's campaign were interfering with the performance of his official duties. Any action taken by an agency to legitimately deny leave -- or request that leave be taken -- would almost certainly be challenged as a form of political reprisal.

Today's postal workers have earned a reputation for even-handed service to all members of their respective communities. More than any other group of Federal employees, they are in daily contact with the public in every city, town, and byway across the country. Outside urban areas, they may be the only representatives of the Federal Government. Advertisers and pollsters indicate that postmasters, letter carriers, and other postal employees are among the most trusted and valued people in their neighborhoods. In our opinion, this national asset should not be put at risk or on loan by authorizing people who perform vitally important mail services to become indelibly associated in their own or their neighbors' eyes with partisan campaign activities.

POLITICAL ACTIVITY
AND THE FEDERAL EMPLOYEE

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AND THE FEDERAL EMPLOYEE

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IMPORTANT NOTE

This booklet summarizes the laws, regulations and policies governing the political activities of federal employees and employees of the District of Columbia government. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may obtain an advisory opinion by telephoning the Office of the Special Counsel or by submitting those questions, in writing, to the address listed below.

Office of the Special Counsel
U.S. Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419
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For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

The Hatch Act
Its Importance to Federal Employees

2 The political activity of government employees has been a concern of government officials since the earliest days of the Republic. Thomas Jefferson, the nation's third president, was among the first to raise this question.

In response to Jefferson's concern, the heads of the executive departments issued an order which stated that while it is "the right of any officer (federal employee) to give his vote at elections as a qualified citizen . . . it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution. . . ."

However, despite the concerns of Jefferson and other American statesmen, almost a century and a half elapsed before Congress enacted a comprehensive law regarding the political activities of government employees.

In 1939, Congress approved landmark legislation known as the Hatch Act which limits the political activities of federal employees, employees of the District of Columbia and certain employees of state and local governments. With the enactment of the Hatch Act, regulations governing the political activities of these employees were written into the United States Code for the first time.

In passing the Hatch Act, Congress determined that partisan political activity by federal employees, employees of the District of Columbia government and certain employees of state and local governments must be limited for public institutions to function fairly and effectively. Through the years, various challenges to the Hatch Act have only served to reaffirm this basic premise.

Before 1979, the U.S. Civil Service Commission had primary enforcement responsibilities for the Hatch Act. However, the Civil Service Reform Act of 1978 transferred the Commission's investigative and prosecutorial authority to the Office of the Special Counsel. The Office of the Special Counsel is an independent office within the U.S. Merit Systems Protection Board (MSPB). Among other things, the MSPB is the administrative body which adjudicates formal disciplinary actions filed by the Special Counsel against alleged violators of the Hatch Act.

Who Is Covered?

With very few exceptions, all employees in the executive branch of the federal government are subject to the political activity provisions of the Hatch Act. Employees of the U.S. Postal Service and the District of Columbia government are also subject to this law.

Part-time or temporary employees are also covered by the provisions of the Act. However, intermittent or occasional employees such as consultants, are covered only during the 24-hour period of any day in which they are actually employed.

It should be noted that all covered employees continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

Who Is Not Covered?

The provisions of the Hatch Act do not apply to employees paid from the appropriation for the Office of the President, to heads and assistant heads of executive or military departments, and to officials who develop and implement national or foreign policy, and who are appointed to such positions by the President, subject to confirmation by the U.S. Senate.

The law also does not apply to individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or part by the District of Columbia or by recognized religious, philanthropic or cultural organizations.

There is also a partial exemption for federal employees living in the vicinity of Washington, D.C., and in other communities where the majority of voters are employed by the federal government. (A detailed explanation of this exemption and those communities where it applies can be found in the Question and Answer section. See page 8.)

Political Do's & Don'ts For Federal Employees

The following list contains examples of both permissible and prohibited political activities for covered employees. These examples will be discussed in greater detail in the next section of the booklet.

Covered Employees

- **May** register and vote as they choose
- **May** assist in voter registration drives
- **May** express opinions about candidates and issues
- **May** participate in campaigns where none of the candidates represent a political party
- **May** contribute money to political organizations or attend political fund raising functions
- **May** wear or display political badges, buttons, or stickers
- **May** attend political rallies and meetings
- **May** join political clubs or parties
- **May** sign nominating petitions
- **May** campaign for or against referendum questions, constitutional amendments, municipal ordinances

- **May not** be candidates for public office in partisan elections
- **May not** campaign for or against a candidate or slate of candidates in partisan elections
- **May not** make campaign speeches or engage in other campaign activities to elect partisan candidates
- **May not** collect contributions or sell tickets to political fund raising functions
- **May not** distribute campaign material in partisan elections
- **May not** organize or manage political rallies or meetings
- **May not** hold office in political clubs or parties
- **May not** circulate nominating petitions
- **May not** work to register voters for one party only

An election is partisan if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

Questions and Answers

General Provisions

Q. What does federal law provide concerning political activity by federal and District of Columbia employees?

A. Generally, covered employees may not actively participate in partisan politics. Primary and runoff elections to nominate candidates of partisan political parties are partisan elections for purposes of the law even though no party designation appears on the ballot. Covered employees are also prohibited from taking an active part in partisan political management.

Specifically, an employee may not run as a candidate or actively work in a campaign if any of the candidates for the public office is to be nominated or elected as a candidate of a national or state political party such as the Republican or Democrtic Party. Being a campaign worker in such an election or holding an official position in a national or state political party is prohibited.

However, while the Hatch Act prohibits political activity, it does not prohibit covered employees from holding public office. If individuals hold elective office at the time they obtain federal employment, they may continue to serve, but may not be candidates for re-election in partisan elections. Likewise, employees may accept appointments to fill vacancies in elected offices, or serve if elected in nonpartisan elections, unless the employing agencies determine that this constitutes a conflict of interest with the performance of federal duties.

Q. Who is responsible for enforcing the Hatch Act?

A. The Special Counsel of the U.S. Merit Systems Protection Board, enforces the law for covered federal employees service and for employees of the District of Columbia government.

Permitted Activities

Q. What political activity is permitted by the statute?

A. All qualified citizens have the right to register and vote and employees are encouraged to exercise this right of citizenship. The law also reserves to them the right to express their opinions on political questions and political candidates.

Q. Are employees allowed to take a direct part in any election campaigns?

A. They may take an active part in **nonpartisan elections**—even as candidates. As an example, a nonpartisan election is one where none of the candidates running for office are representatives of the Democratic or Republican parties. (If a federal employee wishes to serve in a state or local government position, the employee should check the regulations of his federal agency regarding outside employment.)

6 Q. To what extent are employees permitted to express opinions on political subjects and candidates?

A. Employees may express their views publicly or privately about a candidate or about political issues. However, they may not engage in active campaigning for partisan candidates. The display of a political badge, button or sticker is not prohibited political activity but may be restricted by agency regulations while employees are carrying out official duties.

With regard to political questions and public issues, employees are entitled to express their views as citizens. Employees are free to express their views and take action as individual citizens on such questions as referendum matters, changes in municipal ordinances and constitutional amendments. Issues involving highways, schools, housing and taxes are other examples of questions on which employees are usually free to take action. They can participate in meetings where these issues are discussed and they may join other citizens in presenting their views on such questions.

Q. Are employees entitled to make financial contributions?

A. Employees may make contributions to political organizations. However, employees are prohibited from either soliciting or collecting contributions for political organizations.

Q. May employees attend political rallies and join political clubs?

A. Employees may attend political rallies as spectators. They may not participate in the rallies by carrying banners or placards. They may join partisan political clubs but cannot take an active part in the management of the clubs, be officers or members of any of its committees.

Q. May employees attend a political conventions?

A. Yes. Covered employees may attend political conventions, but only as spectators. Employees are not allowed to take part in the deliberations or proceedings of the conventions or any of its committees. Covered employees may not be candidates for, or serve as delegates, alternates or proxies at such conventions.

Q. May an employee write a letter to the editor of a local newspaper expressing an opinion on a partisan issue?

A. Yes, but employees must not engage in concerted solicitations of votes for or against partisan candidates or political parties. (In support of a candidate or political party, the employee may neither write one letter and cause it to be distributed to five newspapers nor may the employee write five consecutive letters to one newspaper.)

Q. May a covered employee's spouse, if he or she is not covered by the law, engage in political activity?

A. Yes. The law does not restrict the activities of an employee's spouse or of other family members in any way.

Prohibited Activities

Q. May employees work as part-time volunteers for partisan candidates if the activity does not involve contact with the public?

A. No. The law prohibits direct action to assist partisan candidates or political parties in campaigns. Thus, covered employees are not permitted to do clerical work at campaign headquarters, write campaign speeches or canvass voters for the purpose of promoting support for candidates or political parties.

The prohibition applies to voluntary campaign work such as addressing and stuffing envelopes even when the activity is conducted in the employee's own home.

If however, employees have a part-time profession or business, they may be allowed to provide services to political parties or to the candidates under certain circumstances. If employees regularly provide such services and the services do not require the employees to perform duties which directly involve their creative talents in functions normally associated with campaigning, the services may be rendered to the parties or candidates.

Q. What are some of the other activities that are prohibited?

A. Soliciting or collecting political contributions, distributing campaign material, selling fund-raising dinner tickets or otherwise promoting such activities as political dinners are prohibited.

Registration and Elections

Q. Are employees allowed to actively assist in voter registration drives?

A. Yes. However, employees must not attempt to influence voters to register for a particular party.

Q. May employees use cars to take voters to the polls on election day?

A. Yes. Employees may assist voters to the polls as a gesture of goodwill or as part of an effort by a nonpolitical organization. Employees may not assist voters to the polls as part of an organized effort on behalf of candidates or political parties.

Q. Employees are sometimes asked to serve as registrars on registration day or as election clerks or officers on election day. Are they permitted to do this?

A. Yes. Employees may accept appointments to serve as election clerks, officers or in similar positions as prescribed by state or local law. However, they may not work at the polls on behalf of partisan candidates or political parties by acting as checkers, challengers, watchers or in similar partisan positions.

Q. Are federal employees entitled to time off from work for voting or to register to vote?

A. A federal government agency may authorize limited time off for voting, chargeable to administrative leave. An employee should check with his agency personnel office for specific information.

Additional Considerations

Q. Are any employees in an executive federal agency exempt from the restrictions of the federal law?

A. Yes, the heads and assistant heads of departments, members of the White House staff and officials who determine national or foreign policy and who are appointed by the President, subject to Senate confirmation, are exempt from the prohibition against engaging in political management and political campaigns.

Q. Does the law apply to part-time employees or to temporary employees?

A. Yes, it applies to both. Intermittent or occasional employees, however, are covered only during the 24-hour period of any day on which they are actually employed.

Partially-Exempted Communities

Q. Are there any instances when a federal employee may be a candidate or take an active part in a partisan election?

A. Yes. A special rule applies to local elections in certain communities of Maryland and Virginia near Washington, D.C., and in a few designated municipalities in other parts of the country. In communities designated by the U.S. Office of Personnel Management, federal-employee residents may participate actively in local partisan campaigns and elections but only as independent candidates, or on behalf of or against independents in the communities in which they reside. The communities to which the partial exemption apply are listed for your information.

Maryland: Annapolis, Anne Arundel County, Berwyn Heights, Bethesda, Bladensburg, Bowie, Brentwood, Capitol Heights, Cheverly, Chevy Chase, Martin's Additions, Sections 1-4 to Chevy Chase, Chevy Chase View, College Park, Cottage City, District Heights, Edmonston, Fairmont Heights, Forest Heights, Garrett Park, Glenarden, Glen Echo, Greenbelt, Howard County, Hyattsville, Kensington, Landover Hills, Montgomery County, Morningside, Mount Rainier, New Carrollton, North Beach, North Brentwood, North Chevy Chase, Northwest Park, Prince Georges County, Riverdale, Rockville, Seat Pleasant, Somerset, Takoma Park, University Park, Washington Grove.

Virginia: Alexandria, Arlington County, Clifton, Fairfax County, Town of Fairfax, Falls Church, Herndon, Loudon County, Manassas, Manassas Park, Portsmouth, Stafford County, Prince William County, Vienna.

Others: Anchorage, Alaska; Benecia, Calif.; Bremerton, Wash.; Centerville, Ga.; Crane, Ind.; District of Columbia; Elmer City, Wash.; Huachuca City, Ariz.; New Johnsonville, Tenn.; Norris, Tenn.; Port Orchard, Wash.; Sierra Vista, Ariz.; Warner Robins, Ga.

Q. What is the basis for granting partial exceptions from Hatch Act restrictions to the residents of certain communities?

A. Upon request, the partial exemption is granted by the Office of Personnel Management, under certain conditions, to communities in which large numbers of voters are employed by the federal government. The exemption recognizes that in such communities the domestic interest of the federal employees may justify their direct participation in local government.

Q. How does this special right differ from the general restriction that applies to all federal employees?

A. Under the general restriction, federal employees cannot be candidates for a local public office or campaign in elections for local public office in which other candidates for the same office represent partisan political parties (Republican or Democrat). In an excepted community the employee may run as an independent candidate against partisan political candidates (Republican or Democrats) and may actively work for or against an independent candidate in such an election.

Q. To what extent may federal employees who reside in excepted communities campaign for independent candidates for local office?

A. Employees may take an active part in the conducting of rallies and the operation of an independent candidate's campaign. In other words, they may engage in all campaign activities on behalf of independent candidates, except for soliciting and receiving political contributions from other federal employees.

Q. Why is soliciting and receiving political contributions from other federal employees an exception to the permitted activities in the designated communities?

A. The criminal laws of the United States prohibit exchange of political contributions between federal employees. The soliciting, giving or receiving of political contributions between federal employees or officers may make them subject to fine and imprisonment.

Penalties for Violation

Q. What is the penalty for violating the Hatch Act?

A. For covered federal employees and District of Columbia government employees, the most severe penalty for violation is removal. The minimum penalty is suspension without pay for 30 days.

Q. Where is the law found that restricts political activity of federal and District of Columbia government employees?

A. Sections 7321-7327 of Title 5, United States Code; Part 733 of title 5, Code of Federal Regulations.

District of Columbia School Teachers

Q. How does the law affect District of Columbia school teachers?.

A. Teachers and other employees of the District of Columbia school system are not covered by the law.

The Office of the Special Counsel

10 The Office of the Special Counsel is responsible for investigating reports or complaints concerning Hatch Act violations committed by covered federal employees and by employees of the District of Columbia government.

If an investigation indicates a violation of the law, a written complaint for disciplinary action may be filed with the U.S. Merit Systems Protection Board (MSPB). A copy of the complaint is also served on the offending employee. Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB. The employee may be represented by counsel at all stages of the proceedings.

After consideration of the entire record, the MSPB will notify the employee and the employing agency of its decision. If the MSPB finds that the employee has violated the law, the maximum penalty that can be imposed is removal from government service. The minimum penalty that can be assessed is suspension without pay for 30 days.

In an effort to better acquaint federal employees with the provisions regarding political activity, attorneys from the Office of the Special Counsel are available to brief federal executives and personnel officers on political participation by covered employees. Any interested party may request advisory opinions from the Office of the Special Counsel.

Past experience has shown that briefing programs are most effective with groups of 30 to 60 people. Arrangements for personal briefing sessions of this nature may be made by contacting the Office of the Special Counsel, U.S. Merit Systems Protection Board, Washington, D.C.

Title 5. United States Code

Chapter 73—Suitability, Security, and Conduct
Subchapter III—Political Activities

Sec.

7321.	Political contributions and services.
7322.	Political use of authority or influence; prohibition.
7323.	Political contributions; prohibition.
7324.	Influencing elections; taking part in political campaigns; prohibitions; exceptions.
7325.	Penalties.
7326.	Nonpartisan political activity permitted.
7327.	Political activity permitted; employees residing in certain municipalities.
7328.	General Accounting Office employees.

§ 7321. Political contributions and services

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

§ 7322. Political use of authority or influence; prohibition

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

§ 7323. Political contributions; prohibition

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) An employee in an Executive agency or an individual employed by the Government of the District of Columbia may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

(d) Subsection (a)(2) of this section does not apply to—

(1) an employee paid from the appropriation for the office of the President;

(2) the head or the assistant head of an Executive department or military department;

(3) an employee appointed by the President, by and with the consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

(5) the Recorder of Deeds of the District of Columbia.

12 **§ 7325. Penalties**

An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

§ 7326. Nonpartisan political activity permitted

Section 7324 (a)(2) of this title does not prohibit political activity in connection with—

(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

§ 7327. Political activity permitted; employees residing in certain municipalities

(a) Section 7324 (a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

(b) The Office of Personnel Management may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immedate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

§ 7328. General Accounting Office employees

The preceding provisions of this subchapter shall not apply to employees of the General Accounting Office.

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IMPORTANT NOTE

This booklet summarizes the laws, regulations and policies governing the political activities of certain employees of state and local governments. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may obtain an advisory opinion by telephoning the Office of the Special Counsel or by submitting their questions, in writing, to the address listed below.

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U.S. Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419
202/653-7188

The Hatch Act
Its Importance to State and Local Government Employees

The political activity of government employees has been a concern of elected officials since the earliest days of the Republic. Thomas Jefferson, the nation's third President, was among the first to raise this question.

In response to Jefferson's concern, the heads of the executive departments issued an order which stated that while it is "the right of any officer (federal employee) to give his vote at elections as a qualified citizen . . . it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution. . . ."

However, despite the concerns of Jefferson and other American statesmen, almost a century and a half elapsed before Congress enacted a comprehensive law regarding the political activities of government employees.

In 1939, Congress approved landmark legislation known as the Hatch Act which limits the political activities of federal employees, employees of the District of Columbia government and certain employees of state and local governments. With the enactment of the Hatch Act, regulations governing the political activities of these employees were written into the United States Code for the first time.

In passing the Hatch Act, Congress determined that partisan political activity by federal employees, employees of the District of Columbia government and certain employees of state and local governments must be limited for public institutions to function fairly and effectively. Through the years, various challenges to the Hatch Act have only reaffirmed this basic premise.

Before 1979, the U.S. Civil Service Commission had primary responsibility for enforcing the Hatch Act. However, the Civil Service Reform Act of 1978 transferred the Commission's investigative and prosecutorial authority to the Office of the Special Counsel. The Office of the Special Counsel is an independent office within the U.S. Merit Systems Protection Board (MSPB). Among other things, the MSPB is the administrative body which adjudicates formal disciplinary actions filed by the Special Counsel against alleged violators of the Hatch Act.

Who Is Covered?

The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants.

The following list offers examples of the types of programs which frequently receive financial assistance from the federal government: public health, public welfare, housing, urban renewal and area redevelopment, employment security, labor and industry training, public works, conservation, agricultural, civil defense, transportation, anti-poverty, and law enforcement programs.

Usually, employment with a state or local agency constitutes the principal employment of the employee in question. When an employee holds two or more jobs, principal employment is generally deemed to be that job which accounts for the most work time and the most earned income.

Hatch Act provisions also apply to employees of private, nonprofit organizations which plan, develop and coordinate federal Head Start, Community Services Block Grant or Economic Opportunity programs.

It should also be noted that employees of certain private, nonprofit single purpose organizations which receive federal assistance may not solicit contributions or use official authority to influence or interfere with the outcome of elections or nominations. Among these are organizations which receive federal assistance under the Head Start or Community Services Block Grant programs.

As a final note, state and local employees subject to political activity laws continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

Who Is Not Covered?

Hatch Act provisions do not apply to:

1) individuals who exercise no functions in connection with federally financed activities; or
2) individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or in part by state or political subdivisions thereof, or by recognized religious, philanthropic or cultural organizations.

The law also exempts certain specified employees from the prohibition on candidacy for elective office. These exemptions include:

1) the governor or lieutenant governor of a state, or an individual authorized by law to act as governor;
2) the mayor of a city;
3) a duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil service system; and
4) an individual holding public elective office. The latter exemption applies only when the elective office is the position which would otherwise subject the employee to the restrictions of the Hatch Act.

Political Do's & Don'ts For State and Local Employees

An individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants. . .

4
- **May** be a candidate for public office in a nonpartisan election
- **May** campaign for and hold elective office in political clubs and organizations
- **May** actively campaign for candidates for public office in partisan and nonpartisan elections
- **May** contribute money to political organizations or attend political fundraising functions
- **May** participate in any activity not specifically prohibited by law or regulation

- **May not** be a candidate for public office in a partisan election
- **May not** use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office
- **May not** directly or indirectly coerce contributions from subordinates in support of a political party or candidate

An election is partisan if any candidate for an elective public office is running as a representative of a political party whose presidential candidate received electoral votes at the preceding presidential election.

CAUTION: An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Prohibitions of the Hatch Act are not affected by state or local laws.

Questions and Answers

General Provisions

Q. Which state and local employees are restricted in their political activity?

A. Executive branch employees in any agency of a state or local government whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants are covered by the law.

Q. What does "principal employment" mean?

A. If an employee has only one position or job, that is his principal employment. When an employee holds two or more jobs, principal employment is usually deemed to be the job which accounts for more work time and earned income than any other job.

Q. Which officers or employees of a state, territorial or municipal government are not prohibited from participating in political management or political campaigns?

A. The governor, the lieutenant governor, the mayor of a city or other elected officials of a state or local government are exempt if the elective office is their principal employment.

Q. Are there any other employees excepted by the statute?

A. Yes. Officers and employees of educational and research institutions, establishments, agencies or systems supported in whole or in part by state or local governments or by recognized religious, philanthropic or cultural organizations are totally exempted from the statute.

Prohibited Activities

Q. What does federal law provide concerning the political activity of certain state or local employees?

A. State or local employees subject to the provisions of the Hatch Act may not:
(1) use official authority or influence for the purpose of interfering with or affecting the result of elections or nominations for office;
(2) directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or
(3) be candidates for elective office.

Q. Does the law cover employees in the executive branch of the territorial governments of Puerto Rico, the Virgin Islands, Guam and American Samoa?

A. Yes. For purposes of the law the term "state" includes states, territories and possessions of the United States.

Q. What type of activity is prohibited by the restrictions against misuse of official authority and coercion?

A. These prohibitions are aimed at activities such as threatening to deny promotion to any employee who does not vote for certain candidates; requiring employees to contribute a percentage of their pay to a political fund (e.g., a "2% Club"); influencing subordinate employees to buy tickets to political fund raising dinners and similar events; and advising employees to take part in political activity. These prohibitions principally affect supervisors but are applicable to any covered employee. For instance, employees still may not coerce, command or advise other covered employees to make political contributions or to contribute their time or anything of value for political purposes.

Q. What is meant by the prohibition against candidacy "for elective office"?

A. State or local employees subject to the Hatch Act may not be candidates for public office in partisan elections. Primary and run-off elections to nominate candidates of partisan political parties are partisan elections for purposes of the law even though no party designation appears on the ballot. However, candidacy for political party office is not prohibited by this provision.

Q. Does this mean that covered state or local employees cannot be candidates for public office in any election?

A. No. The law permits officers and employees to be candidates in *nonpartisan elections*. These are elections in which none of the candidates are nominated or elected as representatives of political parties whose presidential candidates received electoral votes at the last preceding presidential election.

Q. Who enforces the law for covered state and local employees?

A. The Special Counsel of the U.S. Merit Systems Protection Board (MSPB) is responsible for investigating and prosecuting Hatch Act matters. The MSPB has authority to adjudicate disciplinary actions brought by the Special Counsel against covered state and local employees who are alleged to have violated the law.

Permitted Activities

Q. What types of political activity are permitted under the Hatch Act?

A. State or local employees subject to the provisions of the Hatch Act may take an active part in political management and political campaigns.

Q. What types of permitted activities are included in the term "political management"?

A. Employees may be members of and may hold office in political parties, organizations or clubs. Employees may attend meetings, vote on candidates and issues, and take an active part in the management of clubs, organizations or parties. Also, employees may be candidates for party office.

Attendance at political conventions and participation in the deliberations or proceedings are permitted activities. Employees may be candidates for, or serve as delegates, alternates or proxies at such conventions.

Volunteer work for partisan candidates, campaign committees, political parties or nominating conventions of political parties is permitted.

Q. What types of permitted activities does the term "political campaigns" include?

A. Employees may campaign for candidates in partisan elections by making speeches, writing letters and speeches for candidates or soliciting voters to support or oppose candidates.

Employees may attend political meetings or rallies including committee meetings of political organizations, and may serve on committees that organize or direct activities at partisan campaign meetings or rallies.

Q. May employees make financial contributions to political parties or organizations?

A. Yes. Employees may make financial contributions to political parties or organizations. The employees may solicit and collect voluntary political contributions. They may not, of course, coerce, command or advise other covered employees to make such contributions.

Q. Does the law prohibit employees from holding public elective office?

A. No. The law that prohibits candidacy for elective office does not prohibit holding office. Therefore, if an employee holds elective office when appointed to a covered state or local position, the employee may continue to serve but may not be a candidate for reelection in a partisan election. Likewise, an employee may accept appointment to fill a vacancy in an elective public office while concurrently serving in a covered position. Such an employee should, of course, ascertain from his or her employing agency if acceptance of such an appointment constitutes a conflict of interest.

Q. May employees work at the polls on election day?

A. Covered state or local employees may serve at the polls as election officials, clerks, checkers, watchers or as challengers for political party candidates in partisan elections.

Penalties for Violation

Q. What is the penalty for violating the Hatch Act?

A. If the Merit Systems Protection Board finds that the offense warrants dismissal from employment, the employing agency must either: (1) dismiss the employee or (2) forfeit a portion of the federal assistance equal to two years salary of the employee.

If the Board finds the violation does not warrant the employee's discharge, no penalty is imposed.

Q. Where is the law found which restricts political activity of state, territory, possession and local agency employees?

A. Sections 1501-1508 of title 5, United States Code; Part 151 of title 5, Code of Federal Regulations.

Special Considerations for Employees of Private, Nonprofit Agencies Receiving Federal Assistance

Q. Are any political restrictions applicable to employees of private, nonprofit organizations?

A. Yes. Employees of private, nonprofit organizations which plan, develop and coordinate federal Head Start, Community Services Block Grant or Economic Opportunity programs are subject to the same political activity restrictions that apply to covered state and local employees.

Employees of private, nonprofit single purpose organizations which receive assistance under the federal Head Start, Community Services Block Grant or Economic Opportunity programs may not coerce contributions or use official authority to influence or interfere with the outcome of elections and nominations.

Q. Do the political activity restrictions apply equally for a full-time or part-time employee?

A. Yes, provided the employees' position with the federally financed agency is their principal employment.

Q. Is everyone employed under the Comprehensive Employment and Training Act (CETA) covered by the Hatch Act?

A. No. Participants may or may not be covered depending on the particular activity in which they are employed. Those individuals, including participants, involved in the administration of CETA programs are covered.

The Office of the Special Counsel

The Office of the Special Counsel is responsible for investigating reports or complaints of Hatch Act violations by covered employees of state and local governments.

If an investigation indicates a violation of the law, a written complaint for disciplinary action may be filed with the U.S. Merit Systems Protection Board (MSPB). A copy of the complaint is served on the offending employee. Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB. The employee may be represented by counsel at all stages of the proceedings.

After consideration of the entire record, the MSPB will notify the employee and the employing agency of its decision.

If the MSPB finds the offense warrants dismissal from employment, the employing agency must either: (1) dismiss the employee or (2) forfeit a portion of the federal assistance equal to two years' salary of the employee. If the MSPB finds the violation does not warrant the employee's discharge, no penalty at all is imposed.

In order to better acquaint those state and local government employees with the provisions regarding political activity, attorneys from the Office of the Special Counsel are available to brief officials of state and local agencies on political participation by covered employees. Any interested party may request advisory opinions from the Office of the Special Counsel.

Past experience has shown that briefing programs are most effective with groups of 30 to 60 people. Arrangements for personal briefing sessions may be made by contacting the Office of the Special Counsel, U.S. Merit Systems Protection Board, Washington, D.C.

Title 5. United States Code

10 Chapter 15—Political Activity of Certain State and Local Employees

Sec.
1501. Definitions.
1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
1503. Nonpartisan candidacies permitted.
1504. Investigations; notice of hearing.
1505. Hearings; adjudications; notice of determinations.
1506. Orders; withholding loans or grants; limitations.
1507. Subpenas and depositions.
1508. Judicial review.

§ 1501. Definitions

For the purpose of this chapter—

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system; or

(4) an individual holding elective office.

§ 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

§ 1505 Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

§ 1506 Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

§ 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any

12 failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testfiy, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

§ 1508. Judicial review

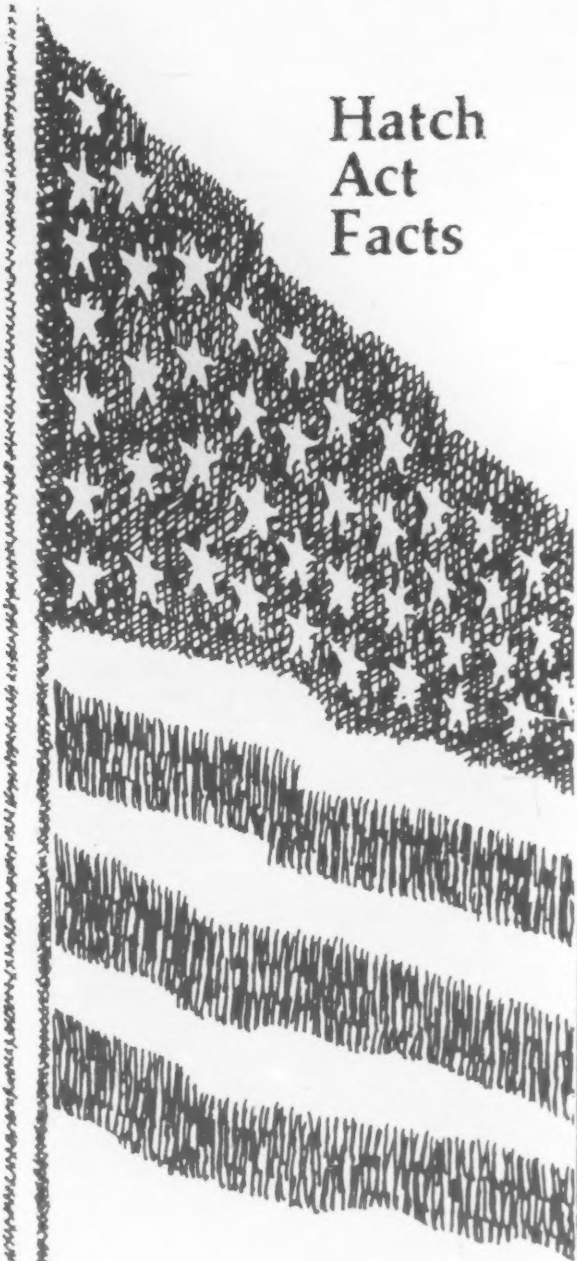
A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

★ U.S. GOVERNMENT PRINTING OFFICE [illegible]



Hatch Act Facts

...About PACs

Office of the Special Counsel
U.S. Merit Systems Protection Board

Political Action Committees,

commonly referred to as PACs, are a recent introduction into the American political arena.

The Federal Election Campaign Act of 1971, as amended, limits the amount of money an individual may contribute to a political campaign Since passage of the law, more PACs have been created than ever before.

PACs have been organized to represent a variety of special interests, from American Scouting Organizations to the Animal Defense League.

The Hatch Act prohibits federal employees from participating in partisan political management or partisan campaign activities. Thus, while the Act would not bar employee participation in PACs *per se*, employees may not take an active part in any PAC effort which is intended to support or oppose a partisan political party or any candidate in a partisan election. Accordingly, federal employees wishing to become involved with PACs, may first want to obtain advice about the political activities permitted and prohibited by the Hatch Act.

This pamphlet is intended to inform federal employees of the restrictions the Hatch Act may impose with regard to PACs.

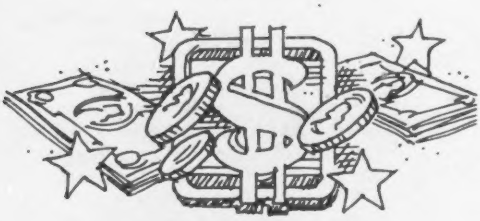
1. What is the Hatch Act and how does it affect a federal employee's activities with regard to PACs?

The Hatch Political Activities Act, commonly referred to as the Hatch Act, became law in 1939. The Act regulates certain political activities of most federal employees. The Act specifically restricts active political participation on behalf of partisan political candidates by covered employees.

Because some PACs function to ensure the success or failure of certain partisan political candidates, active involvement by covered employees in such organizations, which engage in partisan political activities, may constitute a violation of the law.

2. What is a partisan political candidate?

A partisan political candidate is a candidate whose name appears on the ballot "as representing a political party whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected" See 5 U.S.C. §7326; 5 C.F.R. Part 733, §733.101(e)(1). Currently, only candidates of the Democratic and Republican parties are partisan political candidates.



3. May a federal employee contribute to a political action committee?

The Hatch Act does not prohibit federal employees from making a financial contribution to political parties, to partisan candidates for public office or to political action committees.

4. Is there a limit to the amount of money that can be contributed?

The Hatch Act does not limit monetary contributions of federal employees to PACs. Contributions are limited by the statutes which are enforced by the Federal Election Commission.

5. May a federal employee join a political action committee?

A federal employee does not violate the law if and when a PAC membership is conferred on him as a consequence of making a monetary contribution to the organization. In short, a federal employee may accept only an inactive PAC membership if the organization functions to support or oppose partisan political candidates.

6. May a federal employee actively participate in PAC activities?

No. Active participation, as opposed to inactive membership in such organizations necessarily involves federal employees in "directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose," activities specifically prohibited by section 733.122(b)(3), Part 733, 5 C.F.R.

In this regard, "active membership" which means involvement in the activities and administration of an organization must be distinguished from the "inactive membership" which may be automatically conferred on anyone who makes a contribution. *Inactive membership is not prohibited by the Hatch Act.*

7. May federal employees participate in the management of an organization which has a political action committee as an ancillary component?

Yes, providing that the management of the political action committee is separate and independent from that of the larger organization. This answer takes into consideration the fact that PACs may be ancillary to larger organizations. The parent organization may be identified with a particular political ideology; however, it may establish a separate entity for raising money for candidates who support that ideology. (Young Americans for Freedom (YAF) and Americans for Democratic Action (ADA) are examples of such organizations). Federal employees may join organizations such as YAF or ADA and participate in the *management of such organizations,* but they are restricted from any active involvement in any of the organization's PACs. This restriction usually does not present a problem for the federal employee because the PAC has or should have a separate identity from the larger organization.

A federal employee who is involved in the management of an organization or serving as a member of the Board of Directors, which desires to form a PAC should resign from his or her management position unless the PAC is organized as a separate entity.

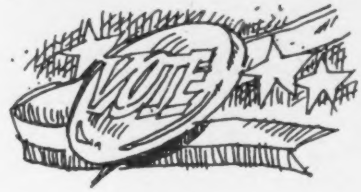
8. May a federal employee attend a PAC meeting strictly as an inactive member?

Yes.

9. Is it permissible for a federal employee to recruit members for PACs involved in partisan political activities?

The law prohibits a federal employee from directly or *indirectly* soliciting, receiving, collecting, handling, disbursing or accounting for contributions for partisan political purposes. By recruiting members for a PAC, the federal employee may be indirectly soliciting contributions for a partisan political purpose. A federal employee is prohibited from engaging in *any* activity which helps an organization raise money for subsequent distribution to Democratic and Republican candidates. Accordingly, if direct or indirect solicitation of money is involved in the recruitment, that recruitment would be a violation of the Hatch Act.

10. Is a federal employee permitted to wear a button or display a bumper sticker on his or her car relating to a specific PAC?

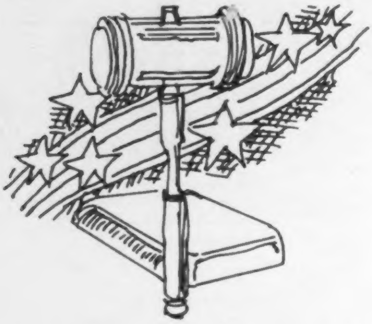


Yes. A covered employee may wear a PAC button or display a PAC bumper sticker. Distribution of such material, however, would violate the law.

11. How is the Hatch Act enforced?

The Office of the Special Counsel is the only government agency responsible for prosecuting violations of the Federal Hatch Act.

The office receives and investigates allegations of violations of the Hatch Act. If the Special Counsel determines that prosecution is warranted, a complaint is filed and litigated before the Merit Systems Protection Board. It is the responsibility of the Board to impose appropriate sanctions, when violations are found.



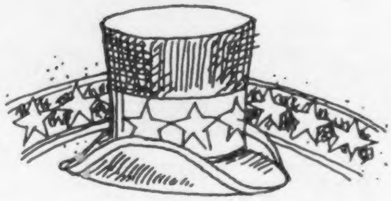
12. What are the penalties if a federal employee violates the Hatch Act through activities with a PAC?

As with any violation of the Hatch Act by a federal employee, the minimum penalty imposed by the Board is a 30-day suspension without pay. The maximum penalty is termination from government employment.

13. If a federal employee has specific questions dealing with Hatch Act restrictions on PACs, how does he obtain advice?

Employees having specific questions about the Hatch Act may write or call:

Office of the Special Counsel
U.S. Merit Systems Protection Board
1120 Vermont Avenue, N.W., Suite 1100
Washington, D.C. 20005



Telephone: 202 or FTS 653-7188
Toll Free: 1-800-872-9855

FEDERAL EXECUTIVE INSTITUTE ALUMNI ASSOCIATION

FEIAA NEWSLETTER

QUESTIONNAIRE RESULTS — SPECIAL EDITION

No. 109 — February 1988

This special edition of the FEIAA Newsletter is devoted solely to the results of the annual Questionnaire survey mailed to FEIAA members in October 1987. Excluded from that mailing were those FEIAA members who are employed by State, local, and foreign governments, since all questions posed pertained to Federal employee concerns. Also excluded were Questionnaires received after December 15, 1987. All told, some 1,332, or an excellent 62 percent, of the 2140 questionnaires distributed, were returned.

This is the seventh consecutive year that the FEIAA has conducted a survey dealing with Federal employee concerns and issues. As such, it represents the only such trend data collected by any organization, in or outside the government, and has a unique value to those studying, researching, or otherwise involved in Federal matters. As in the past, copies of this Special Edition will be sent to Administration officials, members of Congress, staffs of relevant Congressional committees, the GAO, the Volcker Commission on the Public Service, the media, and any other organizations involved in public service matters.

SUMMARY RESULTS

Section A. General Background*

1. *Current Status:*

a. Currently employed by Fed. Govt.	1053
b. Retired from Fed. Govt.	252
c. Resigned from Fed. Govt. before retiring	26
d. No response	1

2. *Current Age:*

a. Under 35	4
b. 35-39	50
c. 40-44	214
d. 45-49	290
e. 50-54	302
f. 55-60	261
g. 61 and over	211

3. *Primary reason for retiring or resigning:*

a. Reached retirement eligibility	75
b. Pay capped or inadequate salary	31
c. Concern over changes in retirement benefits	24
d. Position or organization abolished	14
e. Pursuit of other interests	24
f. Better job offer	12
g. Health	7
h. Job dissatifaction	43
i. New tax rules for retirement	8
j. Other	31
k. No response	10

4. *Total years of service:*

a. Less than five	12
b. 5-10	30
c. 11-15	119
d. 16-24	481
e. 25-34	548
f. 35-40	105
g. Over 40	34
h. No response	3

5. *Current or last level of employment:*

a. SES	598
b. SES equivalent	50
c. GS-16-18	77
d. GS/GM 15 (or equivalent)	599
e. No response	8

6. *Completed SES Candidate Devel. Program:*

a. Yes	179
b. No	1133
c. No response	20

7. *Gender:*

a. Female	157
b. Male	1111
c. No response	64

8. *If Retired or Resigned, was it:*

a. In the past 12 months	48
b. 1-5 years ago	107
c. Over 5 years ago	112
d. No response	12

**The above data are in absolutes and represent the actual count of 1,332 as indicated by responders.*

Section B. Assessement of Federal Service*

	Yes	No	No Opinion	No Response	Percent (%) Yes	Percent (%) No
1. Satisified with performance appraisal and review process	455	708	81	88	34.2	53.2
2. Bonus awards made in fair manner	256	614	348	114	19.2	46.1
3. SES Review Boards elected by career SES members	661	240	319	112	49.6	18.0
4. Favor SES changes limiting it to true generalists	456	574	193	109	34.2	43.1
5. Merit pay system based on true merit	252	877	119	84	18.9	65.8
6. Management incentives worth cost of administration	210	902	135	85	15.8	67.7
7. SES candidate dev. program working successfully	179	654	382	117	13.4	49.1
8. Mgt. effect. fostered by career/pol. relationships	275	637	318	102	20.6	47.8
9. New political appointees received sufficient orientation	173	544	499	116	13.0	40.8
10. Adequate opportunities for advancement into SES	534	585	133	80	40.1	43.9
11. Actively seeking SES employment	299	898	48	87	22.4	67.4
12. Suff. opportunities for SES mobility						
(a). Within your agency	375	631	217	109	28.2	47.4
(b). Between agencies	133	740	305	154	10.0	55.6
13. Encourage young people to consider federal career	490	712	70	60	36.8	53.5

**The percentages appearing in this section are based on the total number of questionnaires returned and not on a total of only those who were to check yes or no. If desired the latter can be derived from the absolutes printed under the Yes/No columns.*

14. On the FEI scale of 1 (low) to 7 (high), how do you rate:

	Low	1	2	3	4	5	6	7	High	No Response	Average
a.Morale in your agency during 1986?	(No.)	70	154	278	310	271	99	21		129	3.4
	(%)	5.3	11.6	20.9	23.3	20.3	7.4	1.6		9.7	
b.Morale in your agency during 1987?	(No.)	89	201	277	241	240	121	21		142	3.3
	(%)	6.7	15.1	20.8	18.1	18.0	9.1	1.6		10.7	

15. Of 11 listed factors, which 5 most motivate excellence in your job performance?

	CHOICE					
	First	Second	Third	Fourth	Fifth	Not Ranked
a. public service	218	108	131	130	128	617
b. salary	68	75	136	178	201	674
c. bonuses	9	28	38	46	102	1109
d. retirement benefits	17	31	65	103	137	989
e. sabbaticals	3	0	2	1	3	1323
f. other training opportunities	5	3	9	24	47	1244
g. honor awards	5	6	14	29	61	1217
h. recog. by peers/superiors	86	132	203	261	160	490
i. personal satisfaction	575	338	163	78	43	135
j. professional growth	59	182	256	196	114	523
k. challenging work	355	383	237	131	70	176

16. Considering everything, how satisfied are (were) you working for the Federal Government?

Very satisfied — 230 **Satisfied — 638** **Neither satisfied nor dissatisfied — 206**

Very dissatisfield — 62 **Dissatisfied — 175** **Don't know/can't judge — 3**

[redacted]

1. Has adequate information on the Federal Employee's Retirement System (FERS) been made available to you to support your decision on whether or not to transfer from the Civil Service Retirement System?

Yes	No	Don't Know	No Response
854	207	145	126

2. Rank in order of priority Federal employee legislative reforms which you believe FEIAA should support **(failure to rank will be interpreted as voting that FEIAA not actively support this issue).**

	CHOICE					
	First	Second	Third	Fourth	Fifth	Not Ranked
a. Amend "Hatch Act" to permit Federal civilian employees to participate in partisan political campaigns	55	49	86	60	59	902
b. Establish two-year Federal budget cycle	286	215	166	117	102	341
c. Extend "merit pay" for GM-13, 14, and 15 to GS employees in those grades	33	56	67	82	61	797
d. Establish simplified, alternative personnel systems consisting of broad pay bands in which advancement based on performance	222	222	161	112	71	432
e. Establish "leave bank" in which employees share accrued annual leave	30	43	94	98	87	724
f. Restore 3-year recovery rule for computing tax in annuity	490	214	140	74	74	262
g. Establish optional early retirement program for Federal employees	149	181	157	148	76	481
h. Federal employees be offered reimbursement, at reasonable cost, for medically necessary long-term care services	46	99	134	143	142	578

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	CHOICE					
	First	Second	Third	Fourth	Fifth	Not Ranked
i. Develop "market basket approach" to employee benefits for individual selection of benefits	82	161	180	144	120	486

3. Rank in order or priority the following personnel management initiatives which you believe FEIAA should support **(failure to rank will be interpreted as voting that FEIAA not actively support this issue).**

	CHOICE					
	First	Second	Third	Fourth	Fifth	Not Ranked
a. Limit smoking in the workplace to designated areas	285	264	196	91	42	454
b. Test Federal employees in sensitive positions for drug use	134	180	159	135	78	646
c. Establish employee health fitness programs	505	298	142	54	12	321
d. Make quality and afforadable dependent care available to all employees	217	256	198	109	45	507
e. Privatize agency activities through cooperative programs	78	75	81	77	163	858

**The above data are in absolutes and represent the actual count as indicated by responders.*

The FEIAA Board of Directors wishes to thank all Association members who participated in this most recent Questionnaire survey. The importance of this participation cannot be overstated. The ever-increasing publicity and research efforts, utilizing the FEIAA survey results, testifies to the importance of this activity. A special thanks to **Joan Turek-Brezina** for her expertise and leadership in tabulating the results and ensuring statistical accuracy.